140.

SUPREME COURT OF THE UNITED STATES.

No. 49.

AMBROSE WALDEN, APPELLANT,

VERSUS

HARRY J. BODLEY AND OTHERS.

APPEAL FROM THE CIRCUIT COURT U. S. FOR KENTUCKY.

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Pleas before the Honourable John M'Lean and Thomas B. Monroe, Judges of the Seventh Circuit Court of the United States of America, in and for the Kentucky District, *held at the Capitol, in the town of Frankfort, at the November Term of said Court, in the year of our Lord,* 1834.

Be it remembered, that heretofore, to wit, on the 14th day of March, in the year 1825, came Bodley, Pogue and others, by their attorney, into the clerk's office of the court aforesaid, and filed the following bill in Chancery, to wit:

BILL.

To the Honourable, the Judges of the United States Circuit Court for the Seventh Circuit, Kentucky District, in Chancery sitting, humbly complaining, show unto your honours, your orators, Thomas Bodley, Robert Pogue, Jonathan Rose, Benjamin Umstead, and Robert Taylor, for himself, and as guardian in behalf of his infant children, Robert Taylor and John D. Taylor, Eliza Sandidge, who intermarried with *Larkin* A. Sandidge, late Eliza Drake, and William Drake, children of Riency Drake, deceased, heirs at law of Abra'm Drake, deceased, all of whom are citizens of the state of Kentucky. That on the 17th day of October, in the year 1783, an entry was made with the surveyor of Fayette county, in the name of Henry Crutcher and John Tibbs, for 10,000 acres of land, in the words and figures following, to wit, "Henry Crutcher and John Tibbs enters 10,000 acres of land, on a treasury warrant, No. 18,747, as tenants in common, beginning at a large black ash and small buckeye, marked thus, I T, on the side of a Buffaloe road, leading from the lower Blue Lick a N. E. course, and about seven miles, N. E. and by E., from the said Blue Licks, a corner of an entry of 20,000 acres, made in the name of John Tibbs, John Clarke, John Sharpe, David Blanchard, and Alexander M'Lean, running thence with the said Tibbs & Cos. line, due east 1600 poles, thence south 1000 poles, thence west 1600 *hundred* poles, thence N. 1000 poles to the beginning, for quantity." To an attested copy of which your orators refer, and pray it may be taken as a part of this bill. Your orators further show, that a survey was legally executed and a patent obtained thereon, in the names of Robert Rutherford, assignee of Henry Crutcher and Welloughly Tibbs, heir at law of John Tibbs, deceased, on the day of 1790; that the said Welloughly Tibbs, after the emination of the patent aforesaid, sold his interest in the said 10,000 acres of land to John Peyton, and conveyed it to him, who sold one moiety thereof to Charles Magill, and the said Robert Rutherford, John Peyton and Charles Megill, sold and conveyed the whole of the said tract of land to Thomas Bodley, Robert Pogue, James Hughes and Robert Campbell; that the said Robert Campbell relinquished and conveyed his interest therein to the said Bodley, Pogue and Hughes, and the said Hughes, afterwards, to wit, on the

11th day of October, 1815, conveyed all his right, title and interest in and to the said 10,000 acres of land, to your orator, Thomas Bodley, all which deeds are recorded in the county courts of Mason and Fleming, to attested copies of which entry, survey, patent and deeds, (which shall be filed in due time) your orators beg leave to refer, and pray they may be taken as a part of this bill. Your orators charge that the said 10,000 acre entry is special, surveyed conformably to entry and agreeably to law, possesses all the requisites of a good and valid claim, and has been sustained by all the courts of competent jurisdiction who have adjudicated upon it.

Your orators further charge, that a certain Ambrose Walden, a citizen of the state of Virginia, (who they pray may be made a defendant to this bill,) having on the 22d day of May, 1780, made the following entry with the county surveyor, to wit: "Ambrose Walden enters 1333 acres of land upon T. W., on the east side of Jacob Johnson's settlement, and pre-emption on the waters of Johnson's fork, a branch of Licking, to include two cabbins on the north side of said fork, built by Simon Butler, and to run eastwardly for quantity" on the 29th day of November, 1785, caused the same to be surveyed illegally, improperly, and contrary to entry, so as to interfere with your orators' claim aforesaid, and hath fraudulently obtained a patent of elder date than the one under which your orators claim as aforesaid.

Your orators charge, that the said entry of Ambrose Walden is vague, uncertain, and ought not to be supported; that it has been illegally and improperly surveyed, so as to interfere with your orators' special entry aforesaid, inasmuch as the entry of Ambrose Walden calls for and depends on an entry of a settlement and pre-emption, in the name of Jacob Johnson, and the entries made on said settlement and pre-emption, are in the name of Peter Johnson, heir at law of Jacob Johnson, and calls to lay on the east side of the Buffaloe road, leading from the Blue Lick to Limestone, nine miles from the lick, on the upper road; when in fact and in truth, there are two Blue Licks, frequently and commonly known, and distinguished by the names of the *Uper* and Lower Blue Lick, from both, and each of which, several Buffaloe roads extend out towards, and some of them from each lick to Limestone, which makes said entry vague and uncertain.

Your orators further show unto your honours, that a certain Lewis Craig purchased of Simon Kenton, who, as the locator of said 1333 acres of Walden's land, claimed one-third thereof for his services, and the said Craig had a division made of the said tract, allowing to him the third part which he claimed under Kenton, and sold several parts thereof, by meets and bounds, to Jonathan Rose, William Allen and Charles Rector, and the said Rose sold part of his purchase to Abraham Shockey, and said Allen part of his to Amzey Chapin; and the said Ambrose Walden, alleging that he had satisfied the claim of the said Kenton as locator, commenced ejectments in the district court of the United States for the Kentucky district, against the said purchasers under Craig, and obtained judgments against them. Your

orators, Bodley and Pogue, further show, that the said Shockey and Chapin, knowing that the title they held under Craig, for the land they claimed by purchases from Allen and Rose, was inferior *to* that of your orators herein set forth, because the tenants of your said orators, (with James Hughes and Robert Campbell, who then held the legal title to said 10,000 acres, entered in the names of Tibbs and Crutcher, and conveyed as hereinbefore set forth,) and, who, on or about the 5th day of September, 1800, obtained an injunction in the said district court, against the defendant, Walden, enjoining the judgments aforesaid; all which will fully appear from the record and papers in said suit, which are referred to for greater certainty; that afterwards, to wit, on the 30th day of October, 1801, your said orators entered into an agreement with Lewis Craig, with the assent of the said Rose and Rector, who became security and paid the purchase money, and obtained deeds from your said orators, for the land they had bought of Craig as aforesaid; that shortly after the said William Allen sold his land, purchased of Craig as aforesaid, to Abraham Drake, to whom your said orators also made a deed for the same. That your said orators, Bodley and Pogue, purchased Shockey's claim to the land he had bought of Rose, and on which he had erected a valuable mill; and they still hold the legal title to that and the land purchased by Chapin of Allen, and to a considerable part of the interference of their claim aforesaid, with Walden's. Your said orators, Bodley and Pogue, further state, that their said injunction, *under an* impression that all the defendants therein were not non-residents, were by mistake dismissed; and the said defendant, Walden, about 12 year after obtaining his judgments aforesaid, and after the demise laid in his declaration in ejectment had expired, with a full knowledge of the manner in which the defendants in said ejectments claimed the land they then possessed, and with a full knowledge of the complainants' claim, (having answered their bill aforesaid, on the 28th day of April, 1802,) sued out writs of habere facias on his judgments aforesaid; and your Bodley and Pogue, with James Hughes, filed their bill in this honourable court, and obtained a new injunction against the judgments in ejectment of said Walden aforesaid; and finding that the demise laid in the declaration had expired, the said Walden moved the court for leave to extend the demises, which was overruled, and James Hughes, who acted as attorney in the said injuction, discontinued the bill; and the said Walden, afterwards, as your orators have been informed, and believe, sued out writs of error *in* the supreme court of the United States, which court decided that the said Walden had a right to extend the demise laid in his declarations. And at the term 1824, by an order of this honourable court, he was permitted to extend his demises to 50 years, which, and (at the same term, without any notice being given to the complainants in this suit, or to the defendants in ejectment,) leave was given the said Walden to take out writs of habere facias possessionem, after the 1st day of March, 1825; to the papers and proeeedings, in which suits your orators refer for greater certainty. Your orators further state, that the said Jonathan Rose,

Charles Rector and Wm. Allen, and those claiming under them, have had possession of their respective tracts of land, by metes and bounds, as purchased from Craig, and held under the claim of Bodley & Co. as aforesaid, for more than thirty years, and have and now do hold the same adversely to the defendant, Walden; that the said Shockey and Chapin, and those holding under them, have had possession for near the same length of time, and hold in the same manner; that your orator, Rose, now has the legal title to the tract of land he purchased of Craig, except the part sold to Shockey; that the legal title of the tract purchased of Craig by Charles Rector, is in your orator, Umstead; the legal title of the tract purchased by Allen of said Craig, except the part sold to Chapin, is in your orators, the heirs of Abraham Drake, deceased; and that the legal title to the parts sold to Shockey and to Chapin, is in your orators, Bodley and Pogue. Your orators are informed, and believe, that the defendant, Walden, never has had actual possession of any part of his said survey of 1333⅓ acres, except 200 acres conveyed by him to Robert Pogue, by proper metes and bounds, about 150 acres of which is now held and claimed by Dale Carter, and the balance by your orator, Pogue. That the said Lewis Craig is totally insolvent, and has been for many years, and your orators, Rose, Umstead, and Abraham Drake's heirs, can expect no remuneration from him, in case the land should be taken by the defendant, Walden's claim. Your orators have made valuable and lasting improvements on said land, for which they require pay if the land should be taken from them.

Your orators further show to your honours, that the defendant, Ambrose Walden, hath taken out executions against your orator, Rose, &c. for the costs of said ejectments, and has or is about to sue out writs of habere facias possessionem on the judgments aforesaid, so improperly obtained, and thereby to turn your orators out of possession, and has commenced new writs of ejectment against your orators and those holding under them, by which means he is harrassing and perplexing your orators, and putting them to great trouble and costs: and, although the defendant, Walden, must know that the claim of your orators is superior to his, combining, &c. threatens to turn your orators out of possession, and refuses to surrender his elder title, so fraudulently and improperly obtained, as aforesaid, all which actings and doings are contrary to equity, &c. In tender consideration whereof, and forasmuch as your orators are remediless at common law, and can only be relieved in equity: to the end, therefore, that the said defendant, Walden, may be compelled, upon his corporal oath, true and perfect answer to make to all and singular the premises, as fully as if the same were here again repeated, and interrogated, that by a decree of this honourable court, the said defendant may be compelled to convey to your orators his elder title to the whole of the land in controversy; and that, until the matter can be finally heard in equity on the merits of their respective claims, that the injunction heretofore granted may be reinstated, or that a new injunction may be granted your orators, enjoining and restraining the

defendant, Walden, and all other persons, from further proceedings on the executions aforesaid, for costs, and upon the five judgments aforesaid, in ejectment obtained in this honourable court against the said Rose, Rector, Allen, Shockey, and Chapin, and that your orators may receive such further and other relief as to equity and good conscience belongs. May it please your honours to grant to your orators the United States' writ of subpœna, with injunction, &c., directed, &c., and your orators will every pray.

THOS. BODLEY,
For the Complainants.

We hereby release all errors at law in the judgments prayed to be enjoined by this bill. Given under our hands and seals, this 9th day of March, 1825.

THOS. BODLEY, [Seal.]
ROBERT POGUE, [Seal.]
JONATHAN ROSE, [Seal.]
BENJAMIN UMSTEAD, [Seal.]
ROBERT TAYLOR, [Seal.]
For himself and the heirs of A. Drake.

Justice's Certificate.

State of Kentucky, Mason County, sct.

Personally appeared before me, a justice of the peace for said county, Thomas Bodley, Robert Pogue, Jonathan Rose, Benjamin Umstead, and Robert Taylor, who severally made oath that the facts stated in the foregoing bill, from their own knowledge respectively, are true; and what is stated from the information of others, they believe to be true. Given under my hand and seal, this 9th day of March, 1825.

JA. MORRIS, [Seal.]

Injunction granted.

United States of America,
Seventh Circuit, and District of Kentucky, } to wit:

Let an injunction issue, agreeable to the prayer of this bill, upon complainants' entering into bond, in the penalty of one thousand dollars, with Nathaniel Hickson, their security, conditioned according to law. Given under my hand, this 14th day of March, 1825.

THOMAS TODD,
An Associate Justice of the Sup. Court United States.

To the Clerk of the Seventh Circuit Court
of the United States, and District Kentucky.

Upon which bill, the following spd. in Chancery, with injunction, issued, to wit:

[SEAL.] *The United States of America, to the Marshal of the Kentucky District, greeting:*

You are hereby commanded to summon Ambrose Walden, a citi-

zen of the state of Virginia, to appear before the judges of our seventh circuit court of the United States, in and for the Kentucky district, at the capitol in Frankfort, on the first Monday in May next, to answer a bill of injunction exhibited against him by Thomas Bodley, Robert Pogue, Jonathan Rose, Benjamin Umstead, and Robert Taylor, for himself, and as guardian on behalf of his infant children, Robert Taylor and John D. Taylor, Eliza Sandridge, who intermarried with Larkin A. Sandridge, late Eliza Drake, and William Drake, children of Reemy Drake, deceased, and heirs at law of Abraham Drake, deceased, all of whom are citizens of the state of Kentucky; and this they shall in nowise omit, under the penalty of four hundred dollars each; and have then there this writ. In testimony whereof, John Marshall, Esq. Chief Justice of the Supreme Court of the United States, hath caused the seal of our said court to be hereunto affixed, this 14th day of March, 1825, and of our independence the forty-fifth.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

The defendant, Ambrose Walden, and all others concerned, are hereby enjoined and restrained from further proceedings on five judgments in ejectment, obtained by said Walden's lessee, at the June term of the district of the United States, in and for the district of Kentucky, in the year 1800, to wit: said Walden's lessee against Craig and Chapin—same against Craig and Allen—same against Craig and Rutter—and same against Craig and Shockey, and from all proceedings on the executions for costs, which have issued on said judgments.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Marshal's Return.

Marshal's Return, to wit: Not found, and no inhabitant of this district.

CHAPMAN COLEMAN, *M. K. D.*

And, afterwards, to wit, at Rules held in the clerk's office of the court aforesaid, in the month of June, in the year 1825, came the defendant, Ambrose Walden, and filed the following answer, to wit:

Walden's Answer.

The answer of Ambrose Walden to a bill in Chancery, filed against him in the United States' circuit court for the seventh circuit and district of Kentucky, by Thomas Bodley, Robert Pogue, Jonathan Rose, &c. This respondent now, and at all times, saving and reserving to himself all and all manner of exceptions, &c. for answer to so much of said bill, as he is advised is material for him to answer, he answers and says, that it is true that he has obtained judgments in ejectments against the complainants, that are tenants on the land in contest, by virtue of his legal and better title thereto; and that he has been, for many years, labouring to possess himself of said land, as he believes he had a right to do; but admits the complainants

have had the management, by one art and another, to defeat his just claim, so far as still to keep him from the possession and enjoyment thereof, and have had the adverse possession for a long time; but as this respondent does know exactly how long, or that it is as long as stated in the complainants' bill, if it is to avail the complainants any thing, he requires them to prove the length of time; this respondent is apprized some improvements have been made on the land recovered by him, in his actions at law, but their value he is not informed of; but charges as a fact, that he is informed of, and believes that the destruction of valuable timber, and waste and reduction of soil, is near equal, if not greater than the value of improvements; and that the rents and profits would greatly bring the complainants in debt, upon a fair adjustment and settlement of accounts between complainants and respondent; and which this respondent insists on, in the final hearing of this case. This respondent cannot pretend to know the reasons of the court for dismissing the first injunction and bill of the complainants, nor the still more inscrutible reasons of the complainants for dismissing their second bill and injunction, which was by them obtained; nor does this respondent conceive those reasons assigned by them ought to avail them much, as they were nothing better than a legal trick to gain the respondent's property, by possession, when, it is well known, the ejectments of this respondent were brought very shortly after the adverse possession of his lands. This respondent pleads and relies on the judgment of the court, in dissolving the injunction, and dismissing the complainants first bill, and the act of the complainants, in voluntarily dismissing and abandoning their second bill and injunction, and insists this bill and injunction now pending, ought to be dismissed and barred. This respondent refers to the records and proceedings, in the other two cases, for greater certainty.

This respondent does not know, of his own knowledge, the sufficiency of the complainants' entry, its identity as to the ground surveyed for it, the notoriety or speciality of its calls, or indeed any of the legal requisites to support it, as equitable or legal claim to the land in contest, or any part thereof; nor does this respondent, of his own knowledge, know any thing of the pretended contracts, or conveyances, by which the complainants derive their claim to said entry, survey or patent, or the land now claimed under the entry made for Henry Crutcher and John Tibbs, of 10,000 acres; and of all those facts and statements, this respondent requires full and ample proof; and as to the calls of the entry, referred to by the complainants, of 20,000 acres, in the name of John Tibbs & Co., this respondent has no knowledge of its legal sufficiency, of the notoriety and specialty of its calls, or of the requisites to establish; and, so far as they are material, this respondent requires proof fully satisfactory.

This respondent states that it is true he had an entry of 1333 acres made for him, on a treasury warrant, on 22d day of May, 1780, a copy of which said entry is herewith filed, and marked (A.), and prayed to be taken and considered as a part of this answer. This respondent states, that before this entry was made, one Jacob John-

son had made a settlement, and raised and entitled himself to a certificate for a settlement for 400 acres, and to a pre-emption of 1000 acres; and although the certificate was obtained in the name of *Peter* Johnson, heir at law of said Jacob Johnson, it was in fact Jacob Johnson's right which the heir obtained; and it was called, known, and reputed to be Jacob Johnson's settlement and pre-emption, at the date of this respondent's entry; and said settlement and pre-emption was then, and in that neighbourhood, notoriously and generally known as Jacob Johnson's settlement and pre-emption. This respondent states and insists, as he is advised and believes, that his said entry is good and valid in law, that the objects called for were, at the date thereof, notorious by those names, and its locative calls special and precise, and certainly designated the land intended to be included.

This respondent is not well informed in law, upon questions involved by conflicting land titles in Kentucky; but he is advised to allege and charge, and does so charge and allege, that his said entry was duly surveyed according to law, so far at least as to properly and rightfully include the land now in dispute, and was legally and duly patented. This respondent relies on his elder entry, survey, and patent; all which are referred to, and made parts of this answer; and also relies on his judgments at law.

This respondent states, positively, that, as to the claim pretended to be derived from *Leinau* Kenton, as locator for part of this land, it is wholly without foundation in justice; that said Kenton was amply and fully paid for locating said tract of 1333 acres, and was not to have one foot of said land. This respondent denies all fraud, of which he stands charged, and prays the benefit of his judgments at law, and to be hence dismissed, with his costs, &c.

SHARP, for Defendants.

Justice's Certificate.

State of Kentucky, Franklin County, sct.

This day, William Walden, the acting agent of the abovenamed Ambrose Walden, appeared before me, a justice of the peace for said county, and made oath, that he is the agent for said Ambrose Walden, and attending to the suit named in this answer for him, and that said Ambrose is a citizen and resident of Fauquier county, Virginia, and is old and very infirm, and depends entirely on this affiant to attend to this suit; and this affiant states the foregoing answer was drawn by his direction, and is, so far as he knows, true; and so far as is not within his knowledge, but he has received by information, he believes to be true.

Sworn to before me, this 16th day of May, 1825.

LEWIS SANDERS, jr. *J. P. F. C.*

Replication to Answer.

And afterwards, to wit, at Rules held in the clerk's office of the court aforesaid, in the month of December, in the year 1825, came

the complainants, and for replication to the defendant's answer, say, that their bill is true, and that the allegations in the answer, so far as they contradict their said bill, are untrue—and dedimus are awarded either party to take depositions.

And, afterwards, to wit, at the November term of the court aforesaid, in the year 1825,

On motion of the complainants, leave is given them to amend their bill, on payment of costs, which bill is filed accordingly, and by consent of the complainants the defendant is permitted to answer the said amended bill by his agent, E. M. Blackburn, which answer is to be received without oath.

Which amended bill is as follows, to wit:

Amended Bill.

An amendment to a bill in chancery, depending in the United States' court for the seventh circuit, Kentucky district, wherein Thomas Bodley, Robert Pogue, and others, are complainants, and Ambrose Walden is defendant.

Your orators, Thomas Bodley and Robert Pogue, respectfully represent, that since filing their original bill by virtue of a decree of the Fleming circuit court, in the state of Kentucky, at their March term, 1825, in the suit in chancery wherein your said orators were complainants, and said Ambrose Walden, the unknown heirs of John Walden, deceased, and others, were defendants, they have obtained a deed, executed, acknowledged and recorded, from James Crawford, commissioner, appointed by the said Fleming court, by virtue of their decree aforesaid, for the whole of the land in controversy (except the 150 acres in Ambrose Walden's survey of 1333⅓ acres, conveyed by the said Ambrose Walden, and now in the possession of Dale Carter, and except so much of John Walden's elder survey of 1666⅔ acres as is now in the possession of John Thr*ail*kield, Ann *Thrailkield*, and the heirs of Jeremiah Proctor, dec'd) to a copy of the record and proceedings of the said Fleming circuit court, in the said suit, which remains unreversed and in full force, and to the said deed your orators refer, and pray they may be taken as a part of this and their original bill, which deed they plead in bar of the defendant, Walden's, actions at law, and charge and pray as in their original bill.

Your orator, Thomas Bodley, further charges and represents to your honours, that part of the entry of the defendant, Walden, of 1333⅓ acres, interferes with an entry of 20,000 acres, made on the 31st day of July, 1783, in the names of John Tibbs, John Clarke, John Sharp, David Blanchard, and Alexander M'Clain, with the proper surveyor, 16,000 acres of which was surveyed and patented in the name of your orator, Bodley, and covers a part of the defendant, Walden's, said survey of 1333⅓ acres, to attested copies of which entry of 20,000 acres, and the patent, your orator, of 16,000 acres, he refers, and prays they may be taken as a part of this and the original bill. Your orator charges that the said entry of 20,000 acres is special and valid, and that the entry of 1333⅓ acres of the defen-

dant, Walden, is vague and uncertain, and cannot be sustained as charged in the said original bill; and prays that the defendant, Walden, may be decreed to convey to your orator the land in controversy, and that your orator may receive such other and further relief as he is entitled to in equity, and will ever pray, &c.

THOMAS BODLEY, *Complainant.*

And afterwards, to wit, at Rules held in the clerk's office of the court aforesaid, in the month of March, and year 1831, until which time this cause was continued, came the defendant, and gave the complainants a rule for hearing.

Rule for Hearing.

And at April Rules, as aforesaid, came the defendant, and set this cause for hearing.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1831, came the defendant, Ambrose Walden, and on his motion the record and proceedings in the Fleming circuit court in this cause is by agreement of the complainants placed on the docket, for further proceedings to be had therein.

And afterwards, to wit, at the same term of the court aforesaid, the following agreement was entered into, to wit:

Agreement.

It is agreed, that in the suits for trial, Thomas Bodley and others, against Ambrose Walden, and Clark's heirs against Ambrose Walden, the records, exhibits, and depositions, taken to read in one case, shall be read in evidence in all, and that the answer filed in the suit of Bodley, &c., shall be considered as filed in the case of Clarke's heirs against Walden, or that the defendant's counsel may, at his election, file an answer, *pro forma*, for the defendants in that suit, and the suits to be now placed on the issue, docket and stand for trial at the next term, and that the parties have leave, respectively, to take depositions, and to amend the surveys.

And afterwards, to wit, at the November term of the court aforesaid, and year aforesaid, the following agreement was made in the following causes:

Thomas Bodley, &c., *Complainants*, *against* Ambrose Walden, &c., *Defendants.*	In Chancery.
Thomas Bodley, &c., *Complainants*, *against* Ambrose Walden, &c., *Defendants.*	In Chancery.
Clarke's Heirs, *Complainants*, *against* Ambrose Walden, *Defendant.*	In Chancery.
David Duncan's Heirs, *Complainants*, *against* Ambrose Walden, *Defendant.*	In Chancery.

This day came the parties, by their counsel, in the four foregoing causes, and produced the following agreement in each, to wit:—

Agreement in four Causes.

Thomas Bodley and others, against Ambrose Walden, &c., in chancery in the United States' court, 7th circuit. It is agreed between the parties, that the record and papers which were used in the suit between the same parties in the Fleming circuit court, which has been removed into said United States' court, shall be used and received as evidence in this suit; and that either party may be permitted to take any depositions they may wish to take, or make any amendment they may direct to the survey returned in said suit, the complainants to give notice to Edward Blackburn, agent for defendants, and the defendants to give notice to Thomas Bodley or Robert Pogue; if the depositions are to be taken in Lexington, one day's notice to Bodley shall be sufficient, and to retake Simon Kenton's deposition, or to take any other deposition, if taken in Mason or Fleming counties, or to amend the surveys, one day's notice to Robert Pogue, of Mason county, shall be sufficient, and that the surveys and depositions taken and used in the suit, Bodley, &c., against John Taylor, may be used in this suit.

THOMAS BODLEY,
For Complainants.
E. H. BLACKBURN,
As Agent for Ambrose Walden.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1832.

Dedimus awarded to take S. Kenton's Deposition.

On motion of the defendant, by his counsel, in the foregoing cause, leave is given him, and a dedimus awarded, to take the deposition of Simon Kenton: and dedimuses are awarded either party to take depositions in said cause. And afterwards, to wit, at the May term of the court aforesaid, in the year 1833, the following entries were made, to wit:—

Thomas Bodley, &c., *Complainants*, *against* Ambrose Walden, *Defendant.* } In Chancery.

Clarke's Heirs, *Complainants*, *against* The same, *Defendant.* } In Chancery.

Duncan, *Complainant*, *against* The same, *Defendant.* } In Chancery.

This day these causes came on to be heard, but the court not being advised, took time, &c.

Leave to take Depositions.

And by consent, either have leave to take depositions, and amend the survey between this and the next term of this court.

Abatement as to Bodley and Pogue.

And afterwards, to wit, at the November term of the court aforesaid, and year aforesaid, came the defendant, Walden, and suggested the death of the complainants, Thomas Bodley, and Robert Pogue. It is therefore considered by the court, that this suit as to them do abate.

Rule to revive Cause in Name of Heirs.

And on motion of the defendant's counsel, it is ruled that the complainants' counsel revive this cause in the name of the heirs of said decedents, on or before the first day of the next term of this court.

And afterwards, to wit, at the November term of the court aforesaid, and year 1833, "Came again the complainants, and defendant's counsel, and by consent, this cause is revived as to the said Bodley and Pogue, in the name of their heirs and representatives, to wit: Harry J. Bodley, William S. Bodley, Hugh S. Bodley, William H. Hurst, and Ann J. his wife, late Ann J. Bodley; Edmund B. Church, and Maria J. his wife, late Maria J. Bodley, John F. Bodley, Catharine E. Bodley, Thomas Bodley, Charles S. T. Bodley, Ellen P. Bodley, George W. J. Bodley, and Catharine H. Bodley, widow, heirs and representatives of said Thomas Bodley, deceased; and James Pogue, John Pogue, Lindsey Pogue, Edwin Pogue, Robert Samuel Garison, and William Andrew Mackey, heirs and representatives of the said Robert Pogue, deceased.

Guardian appointed.

Whereupon, on motion, J. H. Hanna is appointed guardian, ad litem, to John T. Bodley, Catharine E. Bodley, Thomas Bodley, Charles S. T. Bodley, Ellen P. Bodley, George W. J. Bodley, and William Andrew Mackey, infants, under the age of twenty-one.

And this cause is again submitted to the court.

November Term, 1833.

Thomas Bodley and Robert Pogue's Heirs, &c., *Complainants*, *against* Ambrose Walden, *Defendant.* — In Chancery.

Duncan's Heirs, *Complainants*, *against* The same, *Defendant.* — In Chancery.

Clark's Heirs, *Complainants*, *against* The same, *Defendant.* — In Chancery.

The court being now sufficiently advised of and concerning the premises, delivered the following opinion, to wit:—

Opinion of Court.

The court are of opinion that the entries of the complainants, and that of the defendant, are special, and ought to be surveyed as followeth:—The claim of Bodley and Pogue to be surveyed as represented on the plat; the settlement of Johnson to be surveyed by beginning at the nine mile point on the upper trace designated on the connected platt, at the letter C., and to be laid off as followeth:—to extend along the road until lines at right angles at each end of this base, with a third line parallel to the general course of the road, will include the quantity of 400 acres. Peter Johnson's pre-emption is then to be surveyed to adjoin the settlement, so that lines drawn equidistant from the settlement lines, will include the quantity of 1000 acres; and the court are of opinion that as to all the land which will be covered by the settlement when thus surveyed, and as it is already surveyed, that the complainants claiming under Peter Johnson, hath the better title; and that as to all the land included within the pre-emption as now surveyed, and that will be included in the survey when laid off under this decree, those claiming under Johnson hath also the better title; and as to all the land included within the defendant's patent, not included by the settlement, and the pre-emption respectively, according to this decree, that the defendant has the best right; and as to so much, that the complainants' injunction claiming under Johnson, ought to be dissolved.

The court are of opinion, that the defendant Walden's entry ought to be surveyed to lie on the east side of Johnson's settlement, when laid off as above directed, that is, on the opposite side of the road, making the centre of the south-east line of Johnson, the centre of Walden's entry, and to be laid off in a square; and as to all the land which will be common to the survey now made, and a survey according to this decree, Walden has the better title, and to so much the injunction of Bodley and Pogue ought to be dissolved; and that as to all the land covered by the entry under which Bodley and Pogue claim, not common to the surveys aforesaid, outside of Johnson's settlement and pre-emption, when laid off as above, the defendant ought to convey to the heirs of the said Bodley and Pogue; and that the defendant ought to convey all the lands which will be taken or included in the entries of Johnson, when ascertained as above directed, claiming under Johnson, to the complainants, agreeably to their titles respectively. And to enable the court to enter a final decree herein, the court direct the surveyor to go again upon the ground, and lay off and ascertain the respective claims of the complainants and the defendant, by metes and bounds, and the question of costs is reserved until the coming in of the decree.

It is admitted by defendant's counsel, that the persons described as the heirs of Clark and Duncan, are the heirs of the persons as described in their bills.

May Term, 1834.

Thomas Bodley's Heirs, &c., *Complainants*, *against* Ambrose Walden, *Defendant*. } In Chancery.

Duncan's Heirs, *Complainants*, *against* The same, *Defendant*. } In Chancery.

Clark's Heirs, *Complainants*, *against* The same, *Defendant*. } In Chancery.

The defendant's counsel waived the necessity of complainants' prosecuting a formal petition, &c.

Motion for Rehearing.

Whereupon defendants moved the court for a rehearing in these cause, upon grounds set forth in affidavit, which motion is laid over.

And afterwards, to wit, on a subsequent day of the term, and last aforesaid,

This day the motion for a rehearing on behalf of Pogue and Bodley's heirs came on to be heard, but the court not being advised, took time, &c.

And afterwards, to wit, on a subsequent day of the term and year last aforesaid,

It being stated by counsel that there was informality in reviving this cause at the last term, in the name of Pogue's heirs, some of the heirs not being named,

Revived in Name of Pogue's Heirs.

It now, on motion of Pogue's heirs, revived in the names of John H. Pogue, William L. Pogue, Edwin P. Pogue, Robert C. Pogue, Samuel Y. Garrison, and Ann E. Garrison, his wife, late Pogue, and Andrew W. Mackey, infant son of Jane J. Mackey, late Pogue, and leave is given either party to take depositions generally, until first day of October next, to be read on the motion for a rehearing, or upon the final hearing, if the cause is opened.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1834, these causes of Bodley's heirs, &c., against Walden, Clark's heirs against Walden, and Duncan's heirs against Walden, were finally argued, but the court not being advised, took time, &c.

And at a subsequent day of the term aforesaid, the court entered the following decree, to wit:

Decree.

November Term, 1834.

Harry J. Bodley, William S. Bodley, Hugh S. Bodley, William H. Hurst, and Ann J. his wife, late

Ann J. Bodley; Edmund B. Church, and Maria J. his wife, late Maria J. Bodley; John F. Bodley, Catharine E. Bodley, Thomas Bodley, Charles S. T. Bodley, Ellen P. Bodley, George W. J. Bodley, and Catharine H. Bodley, widow, heirs and representatives of Thomas Bodley, deceased; and John H. Pogue, William L. Pogue, Edwin P. Pogue, Robert C. Pogue, Samuel Y. Garrison, and Ann E. Garrison, his wife, late Pogue, and Andrew W. Mackey, infant son of Jane J. Mackey, late Pogue, heirs of Robert Pogue, deceased, *Complainants*,
against
Ambrose Walden, *Defendant*. } In Chancery.

Judith Lacy, Susan Lacy, Mary Lacy, Thomas Lacy, Charles Lacy, Walter Lacy, and Daniel Lacy, heirs of Elizabeth Lacy, deceased, formerly Elizabeth Clarke, one of the children and heirs of Benjamin Clarke, deceased; Thomas Clark, Mary H. M'Millan, daughter and heir of Mary M'Millan, deceased, who was formerly Mary Clarke, daughter and one of the heirs of said Benjamin Clarke, an infant, by her father and guardian, Andrew F. M'Millan, and Virginia Clarke; the said Thomas and Virginia being also children and heirs of said Benjamin Clarke, deceased; Walter Lacy, and A. F. M'Millan, *Complainants*,
against
Ambrose Walden, *Defendant*. } In Chancery.

John Patton, and Nancy, his wife, Thomas Patton, and Amanda, his wife, Henderson Duncan, Alfred Duncan, Mitchell Duncan, William Duncan, Jane Duncan, James Campbell, and Mary, his wife, James Lindsey, and Nancy, his wife, Martin Duncan, Benjamin Duncan, Joseph Duncan, Elizabeth Duncan, and Jane Duncan, heirs and representatives of ——— *Complainants*,
against
The same, *Defendant*. } In Chancery.

The court being now sufficiently advised of and concerning these causes, delivered the following decree, to wit:

By consent of the parties, these suits were to be tried at the same time, and the papers and pleadings filed in one case should *should* be considered and have full effect in all the cases, to enable the court to decide the controversies in all the cases on their respective merits: the entries under which Bodley's heirs and Pogue's heirs claim, appear to the court to be special, and to cover the whole of the land in contest; but being younger than those of Johnson and Walden, those latter entries must prevail, so far as they are special, *special* and

properly surveyed; and as the complainants, Bodley and Pogue, have no suit depending and for hearing as to any defendant, except the defendant Walden; and the other complainants none, except against said Walden, it will only be necessary for the court to settle how far Walden shown the superior equity to the land in contest. It seems to the court that the surveyor has truly represented the survey as originally run, and as it should have been surveyed, according to the interlocutory decree of this court, and that the land common to each survey, for Walden, contains 1144 acres, 2 roods, and 32 poles of land, as designated on the plat by the figure, red 8, the letters figure 7, and bounded as followeth, to wit: Beginning at a stake six feet north of a white oak tree, corner of Walden's, as last surveyed, represented at 8, and running thence with that line, south 37 25 E., 297 poles, to a stake in a line of Wald*ron*'s original survey, in Tibb's line at f; thence with that line south 20 west, 288 poles, to a stake in a lane at the intersection of the decreed line, 82 poles north, 20 E. from said Walden's original corner, near Proctor's, at G; thence with the decreed line, *S*, 52 30, W. ninety-five poles to a stake in another of said Wald*ron*'s old lines in cleared land at h; thence with the old line, N. 70, W. 22 poles, to a stake at I, another of the decreed lines; thence with that line, N. 27 45, W. 273 poles, to two buckeyes and sugar trees at 7; thence N. 52 35, E. 461 poles and 21 links to the beginning, from which is to be deducted 317 acres, 1 rood, and 38 poles, part of Johnson's pre-emption, and bounded as followeth, to wit: Beginning at two buckeyes and sugar tree corner to said Wald*ron*'s decreed survey at 7, and running thence with that line, N. 52° 35′, E. 461 poles and 21 links, to a stake 6 feet north of a white oak at red 8, another of the decreed corners; thence with that line, S. 37, E. 109 poles and 16 links, to a stake near a small elm at K, and in Johnson's decreed line; thence with that line, S. 52 35, W. 461 poles and 21 links, to a stake near a field at and thence N. 37 25, W. 109 and 16 links to the beginning, to which those claiming under Johnson have the best right. It is therefore decreed and ordered, that as to all the land outside of the said 317 acres, 1 rood, and 38 poles, last aforesaid, and within the 1144 acres and 2 roods, and 32 acres laid down on the connected plat, that the defendant, Wald*ron*, so far as he hath possession by his tenants, be ejected; and so far as it is possessed by the complainants, or any of them, or those claiming under them, that they, on or before the 1st day of January next, render up and deliver the possession to the said Wald*ron*; and that as to all the land outside of the bounds of the 1144 acres and 2 roods, and 32 within the bounds of the 317 acres, 1 rood, and 38 poles, that said Waldron deliver the possession so far as he hath it, and that the injunction be made perpetual as to the same, and as to all the ba*l*ance of the 1144 acres, 2 roods, and 32 poles, and cases at law, that the injunction be dissolved, and possession delivered as before decreed; and the court do further decree, that the complainants shall jointly or several*l* , as they may hold, convey, by sufficient deeds of release, all their right and title

in and to the balance of the 1144 acres, 2 roods, and 38 poles of land, being 827 acres and 84 poles, more or less, of land; and on such release being executed or tendered, that the defendant shall convey to the complainants, at their proper costs and charges, respectively, by deeds of release, such parts and portions as they respectively hold, outside of the land decreed to Waldron.

And to enable each party have the full benefit of this decree, the clerk is authorized and directed, from time to time, to grant to each of them, or their attorney, as they shall apply, a writ or writs of possession, which the marshal is directed to execute, &c.

As the complainants have, by multiplying suits, greatly increase the expences, it is decreed that each party pay their own costs in these suits.

Agreement.

The parties agree that a record of the bill, answers, and orders, the entries and surveys, and patents, and the survey and decrees in the case of Bodleys and Pogues, in this court, shall be sufficient, without recording the whole suits and papers in each all the cases; and that on the event of either party appealing, or suing out a writ of error, that the clerk may copy all the papers in all the record and that when they are so copied and certified, that the transcript shall have the same effect, as if there were full and separate records made out in each and all the cases. This agreement being formed and entered into with the leave of court, to avoid expenses involved in the cases, owing to the multiplicity of suits involving the same questions.

R. Wickliffe,
Attorney for Waldron.
Ja. Haggin,
Attorney for Complainants.

And afterwards, to wit, on a subsequent day of the term and year last aforesaid,

On motion of the defendant's counsel, it is ordered, that the decree entered up in the causes,

Decree annulled in part.

Thomas Bodley's heirs, &c. against Ambrose Walden; Benjamin Clarke's heirs against Ambrose Walden; and Duncan's heirs against Ambrose Walden, be and the same is hereby annulled, and held for naught.

And on a subsequent day of the term aforesaid,

Motion to file Bill, &c.

Came the defendant, by his counsel, and moved the court for leave to file a supplemental answer and cross bill in the first suit, (Bodley's heirs, &c. *v.* Walden) and for leave to file answers in the second and third suits (Duncan's heirs *v.* Walden, and Clarke's heirs *v.* Walden); but the court not being advised, took time, &c.

And on a subsequent day of the term aforesaid,

Motion to file Amended Answers.

Came the defendant, Ambrose Walden, by counsel, and moved the court for leave to file amended answers in the causes,—Bodley's heirs, &c. *v.* Walden, Duncan's heirs *v.* same, and Clarke's heirs *v.* same.

Motion overruled.

And the court being advised, do order that the said motion be overruled.

Whereupon said defendant's counsel tendered to the court a bill of exceptions to said opinion, which was signed and sealed, and this day filed.

And the parties again come by their counsel, and these cases having been heard upon the bills, answers, and depositions, (including those taken and filed since the last term of this court) the agreements of the parties and the pleadings, reports, depositions, and other papers referred to in said agreements, together with the report of the surveyor made under the interlocutory decree; and the court being now sufficiently advised of and concerning the premises, delivered the following opinion, and made the following order:

OPINION.

It is the opinion of the court that all the entries under which the complainants claim, are valid; and that it sufficiently appears that these entries do embrace, and the grants issued upon them, and under which the complainants claim title, as they respectively represent, also cover all the land included in the grants, under which the defendant, Walden, claims; and it still seems to the court that the entry in the name of the defendant, under which he claims, is also valid for all the land which it covers within his grant, when surveyed according to the directions of the interlocutory decree; and that it being elder than the complainants' entries in the name of John Tibbs, Henry Clarke, and others, and in the name of Henry Crutcher and John Tibbs, it must prevail over them; but the settlement and pre-emption, in the name of Peter Johnson, having priority over the entry of the defendant, the complainants, who show title from Reed and Fox, to whom the grants were issued on said settlement and pre-emption claim, have the superior equity; and the court are satisfied that the survey and report made herein, under the interlocutory decree, correctly represents the interferences between the said claims, in the names of said Johnson and the defendant.

On the principles applied to the facts in each case, the rights of the parties asserted to the lands in controversy, and represented in the report and plat of the survey used on the hearing, must be determined.

But in consequence of the position of the parcels of the land claimed by Rose, Umstead, and the heirs of Drake, Clarke, Duncan, not being represented on any of the plats not shown in the cause by

other proof satisfactory to the court, the right of the parties cannot now be determined with proper certainty.

It is ordered that the surveyor Athelston Owens, go again upon the land in controversy, and survey as much of the several surveys of said land as is claimed by the complainants, Jonathan Rose, Benjamin Umstead, Robert Taylor, John D. Taylor, and others, heirs at law of Abraham Drake, Benjamin Clark's heirs, and the heirs of David Duncan, under their several alleged purchases from Bodley and Pogue, and Reed and Fox, as may be necessary to ascertain whether said parcels of land be within or without the entry of Ambrose Walden, as laid down on the plat made and returned herein under the interlocutory decree, and to show the interference of said entry with any of said parcels of land which may be divided by the lines thereof, and that he also ascertain the position of the parcels of said land claimed by the heirs of Daniel Duncan and Benjamin Clarke, so as to show whether said parcels of land be all within the entries in the name of Peter Johnson, and if not within them, what part thereof is covered by them; and having done so, that he lay down such interferences and the position of each said parcels of land on a copy of the corrected plat made and returned herein under the former order of this court.

The surveyor may act on the application of either party, the other party interested having reasonable notice according to the agreement of the parties.

Whereupon the defendant, by his counsel, filed a petition, which is as follows, to wit:

Petition of Defendant.

"To the judges of the circuit court of the United States for the district of Kentucky, Ambrose Walden respectfully represents, that he entered into the agreement of record to try the cases of Bodley and Pogue, &c. against himself, and the heirs of Clarke against himself, and the heirs of Duncan against himself, with the sole view of having a trial at the next term; and to attain that object, gave to the complainants concessions in each case, and made admissions favourable to the complainants, which he did on the sole ground, and with a view to the determination of a controversy protracted to a period of more than a quarter of a century, without any fault or default of his: that since said agreement, and contrary to its spirit, the complainants have continued the cause, and have been permitted to take new and additional testimony; *that they*, failing to execute a survey under the interlocutory decree, your petitioner, at his own expense, caused it to be executed. That the complainants, although notified, and most of them on the ground when the survey was made, declined to have any of their claims laid down. Your petitioner wishes no more surveying, he has none to do; and *enjoined* as he is, he has no expectation that the complainants will be more vigilant to close the controversy, and deliver him possession, than they and those under whom the claim have been for the last twenty-five years. He therefore prays that your honours will give him a *rule nisi* on the com-

plainants to prepare their case, and to execute the survey ordered within some reasonable time. He also prays that no change in the pleadings and proof be allowed in future, unless the causes be sent to the rules. He also prays that the injunctions granted to the heirs of Drake, those of Duncan, and those of Clarke, be discharged, as neither of said complainants have executed releases of error agreeably to law and the rules of this court.

R. WICKLIFFE,
For Complainant.

And, on a subsequent day of the term aforesaid, "came the parties (in the suits Bodley's heirs, &c., against Walden; Duncan's heirs against Walden; and Clarke's heirs against Walden) and filed the following agreement:

Agreement.

"It is agreed, that every agreement or admission on file for the preparation of any of those cases for hearing, shall extend to all. It is further admitted, that the complainants are respectively invested with the titles under the entries of Peter Johnson and Tibbs, and Clarke and Tibbs and Crutcher, as alleged in their several bills. It is also agreed, that the court may now give a final decree without further ascertainment of the boundaries or positions of the particular tracts or settlements of each claimant, or person interested; and that the principles thereof shall be carried into effect as fully as if each tenement and each proprietor were specially named and identified.

JA. HAGGIN,
For Complainants.
R. WICKLIFFE,
For Defendant.

And these causes are submitted to the court for decree.

And, on a subsequent day of the term aforesaid, "the court being now sufficiently advised of and concerning the premises, pronounced the following decree:

Decree.

The parties having, since the last interlocutory decree, herein at the present term, filed, and had entered of record an agreement admitting a part of the facts, the uncertainty as to which constituted the difficulty in rendering a final decree, and having on both sides urged the court to pronounce a final decision, which will end their controversies, at the present term, and it appearing to the court such decrees may be now rendered, and in their execution applied with certainty to the ground, and thus carried into effect, the several causes will be now determined.

In the case of Benjamin Clarke's Heirs, against Ambrose Walden,

It is decreed and ordered, that the said Ambrose Walden do, on or before the first day of January next, release and convey to the

complainants, John Patton, and Nancy Patton, his wife; Thomas Patton, and Amanda Patton, his wife; James Campbell, and Mary Campbell, his wife; James Lindsey, and Nancy Lindsey, his wife; Henderson Duncan, Alfred Duncan, Mitchell Duncan, William Duncan, Jane Duncan, Martha Duncan, Benjamin Duncan, Joseph Duncan, Elizabeth Duncan, and Jane Duncan, devisees of David Duncan, by a proper deed, with a covenant of warranty against all persons claiming by, through or under him, the said Ambrose Walden, all of the said tract or parcel of land mentioned and claimed by the complainants in their bill, containing, by estimate, one hundred and seventy-eight acres and twenty-seven poles, being part of the settlement and pre-emption entered in the name of Peter Johnson, and the part of the tract of two hundred acres thereof purchased by said David Duncan from Arthur Fox, one of the patentees, which was conveyed to the said David Duncan, by Thomas Bodley, by deed bearing date the 3d day of October, 1822, and bounded as follows: Beginning at a stone near the corner of said Duncan's orchard, thence south thirty-eight and a half degrees, east one hundred and thirty-eight poles, to a stake corner to John Peed; thence with Peed's line south, fifty-two degrees, west two hundred and fifty-two poles, to a white oak and stone in William Deye's lane; thence north six degrees, west one hundred and fifty-nine poles, to a stake; thence north fifty degrees, east one hundred and sixty-eight poles, to the beginning; except thereout any part if in fact there be any part of the said one hundred and seventy-eight acres and twenty-seven poles, which may lie without the said entries in the name of Peter Johnson, one of four hundred acres, and the other of one thousand acres, constituting his settlement and pre-emption claim, or without the patents to Reed and Fox, issued thereon, and at the same time within the entry of the defendant, Ambrose Walden, for thirteen hundred and thirty-three acres, as said entries and patents are laid down in the report and plat of the survey, made under the former interlocutory decree in this cause, and approved at the present term.

It is further decreed and ordered, that the said Ambrose Walden be, and he is hereby forever enjoined from all proceedings to recover the possession or otherwise disturb the said complainants, or those claiming or holding under them, in the possession of the said parcel of land, which he is above directed to convey to them. And he is further enjoined from demanding or otherwise enforcing the payment from the present complainants, of any obligation or claim taken or held by him on the said David Duncan, in his lifetime, or any claim he may hold against the present complainants or those holden under them, for the rents or use and occupancy of said tract or parcel of land above directed, to be released and conveyed since the execution of the said writ of habere facias possessionem, but as to any part of the said tract of land claimed by the complainants in their bill, which may lie without the said entries in the name of Peter Johnson, or without the said patents thereon, and at the same time within the defendants' entry, as laid down in said survey or report, (if there be any such part in fact,) and as to the rents or claim of

the defendant for the use and occupancy thereof, the complainants' injunction is dissolved.

And it is further ordered and decreed, that the defendant pay to the complainants the said devisees of David Duncan, their costs in this behalf expended, and may have execution, &c.

DECREE.

In the Case

Benjamin Clarke's Heirs, *Complainants,*
against
Ambrose Walden, *Defendant.*
} In Chancery.

It is decreed and ordered, that the defendant, Ambrose Walden, do, on or before the first day of January next, by a proper deed, with a covenant of warranty against all persons claiming by, through, or under him, the said Walden, release and convey to the complainants, heirs at law of Benjamin Clarke, deceased, Judith Lacy, Susan Lacy, Mary Lacy, Thomas Lacy, Charles Lacy, Walter Lacy, and Daniel Lacy, (children and heirs at law of Elizabeth Lacy, deceased, one of the children and heirs at law of Benjamin Clarke, deceased,) Daniel Clarke, Susan Sumrall, the wife of Joseph K. Sumrall, (one of the daughters and heirs of said Benjamin Clarke, deceased,) Thomas Clarke, Mary H. M'Millan, (daughter and heir of Mary M'Millan, deceased, who was one of the daughters of said Benjamin Clarke and Virginia Clarke, all that tract or parcel of land, mentioned and claimed by complainants in their bill, of defendant, Walden, being that part of the one-half of the settlement and pre-emption of one thousand four hundred acres, entered in the name of Peter Johnson, and granted by five several patents to John Reed and Arthur Fox, which was assigned in the petition between the said Reed and Fox to the said John Reed, and sold by him to the said Benjamin Clarke, ancestor of the complainants,) which lie within the tract of one thousand three hundred and thirty-three acres granted to the defendant, Walden, excepting thereout the land without and not included by the said entry in the name of Peter Johnson, or outside of the said patents issued thereon, and at the same time included within the said entry, in the name of the defendant, Ambrose Walden, as said entries are surveyed and represented in the report and plat made and returned in this cause, under the former interlocutory decree, and confirmed at the present term.

And it is further decreed and ordered, that the said Ambrose Walden do, on or before the first day of January next, surrender and deliver over to the said complainants, the possession of the said tract or parcel of land, which he is above ordered to convey to them; and the said complainants may, after that day, have the proper process, to be issued by the clerk of this court, to have the possession thereof delivered to them.

And it is further decreed and ordered, that the defendant, Ambrose Walden, pay to the said complainants, the heirs of Benjamin Clarke, their costs in this behalf expended, and they have execution, &c.

The question on the claim of the complainants for rents, &c. asserted in their bill, is reserved and continued until the next term.

DECREE.

In the Case of

Thomas Bodley's Heirs, Robert Pogue's Heirs, Jonathan Rose, Benjamin Umstead, and the Heirs of Abraham Drake, *Complainants*, *against* Ambrose Walden, *Defendant.* } In Chancery. Instituted in this Court.

Thomas Bodley's Heirs, and Rob't Pogue's Heirs, *Complainants*, *against* The same, *Defendant.* } In Chancery. Removed from Fleming Ct. Ct.

It appears that Bodley's heirs and Pogue's heirs claim the same land, on the same original titles in each suit, and that the other complainants claim only parcels thereof, under the same titles, by purchase from them, and these parcels are not defined; the two cases will therefore be considered under the agreement of the parties, and former orders made in pursuance thereof, as consolidated for the purpose of a decree on the merits between the complainants, as one party against the one defendant, and thus considered in these cases.

It is decreed and ordered, that the defendant, Ambrose Walden, do, on or before the first day of January next, release and convey, by a proper deed, with covenant of warranty against all persons claiming by, through, or under him, to the said complainants, to operate in such manner as to invest such of them as may be entitled, as against the others, to any part of the premises in severalty, with the entire interest in such part, and to invest the others with interest in common, jointly, or otherwise, as they may be respectively entitled to, between or among themselves, all that part of the said tract or parcel of land, in the complainants' bill mentioned, granted to the said Walden by patent, bearing date the 21st day of December, 1786, containing, by survey, thirteen hundred and thirty-three acres, which is without, and not included in the entry, in the name of him, the said Walden, as the same is represented in the report, and on the plat of the survey, made under the former interlocutory decree, returned herein, and approved at the present term; excepting thereout the parts thereof, which, by the above decrees, in the case of David Duncan's and of Benjamin Clarke's heirs, against him, the said Walden, he is ordered to convey to the said Duncan's heirs, and to the said heirs of Clarke; and excepting also the tract of one hundred and fifty acres held by Dale Carter, mentioned by the complainants in their originally filed in this court, these parcels are not to be included in the conveyance. And it is further decreed and ordered, that the said Ambrose Walden be, and he is hereby forever enjoined from all proceedings on his said judgments in ejectment, recovered in this court against the said Jonathan Rose, &c. Charles Rector, &c.

William Allen, &c. and Abraham Shockey, &c. or on either of them, to have the possession of any part of the said which he, the said Walden is above directed to release and convey to the said complainants, or otherwise disturbing the said complainants, or those holding under them, in the possession thereof.

It is further decreed and ordered, that the said Ambrose Walden do, on or before the first day of January next, surrender and deliver over to the complainants, the possession of all of the said land, which he is above ordered to release and convey to them, which is not now in their possession, or held under them; and the said complainants may, after said day, have the proper process, to be issued by the clerk of this court, to have delivered to them the possession thereof, to be held by them, or such of them as may be entitled, as between themselves is provided above in the order for the conveyance.

And it is further decreed and ordered that the complainants' said injunction against the said Walden, proceeding on his said judgments in ejectments, be, and the same is hereby dissolved, as to all the land recovered in said actions, which is included within the said entry, in the name of said Walden, and at the same time within his said grant for thirteen hundred and thirty-three acres, issued thereon as the said entry and grant are represented on said surveyor's report, heretofore returned under the interlocutory decree, and approved at the present term, and bounded as follows:—Beginning at a stake six feet north of a white oak tree, corner of Walden, as last surveyed, represented at 8, on the connected plat, and running thence with that line S. 27° 25′. E. 297 poles, to a stake, in a line of Walden's original survey in Tibbs' lane, at f; thence, with that line S. 20°. W. 288 poles, to a stake in a lane at the intersection of the decreed 82 poles, N. 20°. E. from said Walden's original corner, near Proctor's, at S.; thence, with the decreed line, S. 52° 35′. W. 95 poles, to a stake in another of said Walden's old lines in cleared land at h; thence, with the old line, N. 70°. W. 220 poles, to a stake at i, another of the decreed lines; thence, with that line, N. 37° 25′. W. 273 poles, to two buckeyes and sugar tree, at 7; and thence, N. 52° 35′. E. 461 poles and 21 links, to the beginning; containing, by said survey, 1140 acres, 2 rood 22 poles; and that the complainants' injunction against judgments for costs recovered by said Walden, in said actions at law, be, and the same is hereby dissolved, but without prejudice to the equity in this behalf of the said Jonathan Rose.

The question on the claim of the complainants, for the valuable and lasting improvements made by them on the premises, as they allege, and which may be on the land for which said judgments in ejectment were rendered, and which may be lost to them by this decree, is hereby reserved by the court.

It is further decreed and ordered, that the said decree, pronounced by the Fleming circuit court of Kentucky, at its March term, in the year 1825, in the said case of Thomas Bodley and Robert Pogue, against the said Ambrose Walden and others, then pending in said court, and which was afterwards, at the September term, 1828, of said court, on the said Walden's filing his answer, opened and or-

dered by said court to be reheard, be, and the same is hereby set aside, so far as the said decree embraces the part of the said tract of thirteen hundred and thirty-three acres, granted to the said Ambrose Walden, which is included in the entry of the said Walden, as the same is above established by this decree, and to this extent the said decree of the Fleming circuit court, and also the said deed, executed by the said James Crawford, as commissioner, appointed by said court, bearing date the 6th day of September, 1825, and on the same day approved in open court, is annulled, and shall be held for naught.

It is further decreed and ordered, that the defendant, Walden, pay to the complainants, Bodley's and Pogue's heirs, Jonathan Rose, Benjamin Umstead, and heirs of Abraham Drake, their costs expended in the prosecution of said suit instituted in this court, except such parts thereof as were incurred in their opposition to the validity of said Walden's entry, as the same has been established by the decree herein.

And that the said complainants pay to the defendant, Walden, such parts of his costs in said suit, as were expended in establishing his said entry; the clerk is directed to tax the costs, and set off the smaller amount against so much of the greater, and the party in whose favour the balance may appear, may have execution therefor against the other.

DECREE.

In the case of Bodley's Heirs and Pogue's Heirs against Walden, removed from the Fleming circuit court, each party must pay their own costs.

And afterwards, to wit, on a subsequent day of the term aforesaid, and year aforesaid,

Decree in part suspended.

The court not being sufficiently advised of, and concerning the question on the claim of the complainants, for compensation for the valuable and lasting improvements made by them on the land, for which the judgments in ejectment were rendered, and not upon that part of said land which they recovered by the decree rendered herein, nor of the right of the complainants to retain the possession of said land, until such compensation shall be made, the said questions are still reserved, and the said matter continued until the next term. And it is therefore ordered, that that part of the decree rendered herein, on yesterday, by which it is ordered and decreed, that the complainants' injunction against the said Walden's proceeding on said judgments in ejectment, be dissolved, shall be, and the same is hereby suspended, until the further order of this court.

And afterwards, to wit, at the May term of the court aforesaid, and year 1835,

Motion to suspend Judgments at Law.

Came the defendant, by counsel, and moved the court to set aside

and annul the order made in this cause, on the 2d day of December last, suspending the operation of the defendants' judgments at law.

Which motion is laid over.

And afterwards, to wit, at the May term, 1835,

The court being sufficiently advised of, and concerning the question mentioned in the decree herein, at the last term, and reserved by the court, of the claim of the complainants, for the lasting and valuable improvements made by them on the premises, and which may be on that part of the land, for which the said judgment, in ejectment, and which was to the complainants by said decree.

Order appointing Commissioners to make Assessments, &c.

It is now ordered, that James Morris, James W. Waddle, James Marshall, Andrew Thompson, Athelston Owens, Abner Hord, William Hodge, and James Bailey, be, and they are hereby appointed, who, or any four of them, being first sworn, shall go upon the said parcels of land, for which said judgments in ejectment were rendered against Jonathan Rose, &c., William Allen, &c., Charles Rutter, &c., Abraham Shockey, &c., Amsel Chapin, &c., and from their view and judgment, and the testimony of such witnesses as may be produced, by either party, make the following assessments, and report an account thereof to this court.

1st. The damage and waste committed on said several parcels of land, after the commencement of said actions, on the 22d day of February, 1797, distinguishing the damage and waste committed prior to, and what may have been committed subsequent to 8th May, 1824.

2d. The rents and profits of the said several parcels of land, after the said 22d day of February, 1797, distinguishing those which accrued prior to, and those which accrued subsequent to the said 8th day of May, 1824.

3d. The value of the lasting and valuable improvements on said parcels of land, showing by whom, and when made.

4th. The value of said parcels of land at the time of the assessment, regarding it as if said lasting and valuable improvements had never been made.

The said commissioners may meet, and proceed at the instance of either party having due notice.

And it is ordered, that the injunction shall remain until a decision on the above matter, and on the next day of the term aforesaid.

On motion of the defendant, it is ordered, that the commissioners appointed herein, by the order, on yesterday, may, at the instance of the defendant, in addition to the assessment directed by said order, ascertain the value of the rents and profits of the land in the possession of the complainants, or those claiming under them, since the pendency of the suits, and the damage and waste of soil and timber, and the value of all valuable and lasting improvements within, and upon the whole land claimed by the complainants in their bill, and not adjudged to them in this suit, which may not be embraced by the said order of yesterday, and report a separate account thereof.

Motion for leave to take out Executions on Judgments in Ejectment.

November Term, 1835.

The defendant, Ambrose Walden, moved the court, that he have leave to take out executions on his judgments in ejectment, as to all the defendants, except the defendants under whom Proctor and Blair claim, as set out in their petition, and as to them, unless they elect to prosecute the claim to pay for improvements in the name of those under whom they claim in this suit, and not further to prosecute their motion at law, to reverse and vacate the orders of this court, set forth in said rule; and that, in the event of the said Blair and Proctor electing to prosecute in this suit, then to enjoin them from proceeding on said rule. But the court dividing in opinion, the said Proctor and Blair, nor either of them, were put on their election, and the motion of the defendant, Walden, was overruled, which said Walden prays may be noted on the journal of this cause.

See the petition referred to in the above order, recorded on page 21 of this record.

Commissioners' Report quashed, and other Commissioners appointed, &c.

May Term, 1836.

On motion of the complainants, it is ordered, that the report of the commissioners filed herein, at the last term, be, and the same is hereby quashed. And it is further ordered, that James Morris, James W. Waddle, Andrew Thompson, Athelston Owings, Abner Hord, William Hodge, and Leroy Dobbins, be, and they are hereby appointed commissioners for the same purpose the former appointment was made; and the said commissioners, or any five of them, being first sworn, are directed to proceed, and ascertain the several facts directed to be ascertained by the former orders of May, 1835, and in the manner therein directed; and in addition thereto, the said commissioners are directed by the court, in the same manner, to ascertain the value of the lasting and valuable improvements made on the said land, recovered in said actions of ejectment, and not recovered by the complainants by the decree in this case, prior to the 14th day of March, 1825.

And the value of said improvements made between that period and the 1st day of December, 1834, and of the value of such improvements that may have been made since that period.

And that in the assessment of the rents, waste, and deterioration of soil, they ascertain and state the same, for the same periods of time, and up to the time of making the assessment.

And the said commissioners are further directed to ascertain and report the quantity of the several parcels of land held by the several tenants on said land, as well as the value thereof, exclusive of improvements.

To the entering of this order, the defendant, Ambrose Walden, objects, and desires that the same may be noted on the record.

And on a subsequent day of the term and year aforesaid,

Came again the parties, by their counsel, and the complainants having failed to cause the commissioners appointed herein, to ascertain the value of improvements on the land, &c. or to show any cause why they have not proceeded in the preparation,

Suspension of Decree set aside, &c.

It is ordered, that the order made herein, on the last day of the November term, 1834, suspending the part of the decree rendered on the day before, by which it was ordered, that the complainants' injunction against said Walden's proceeding on said judgments, is hereby set aside, and that the said decree shall stand as originally rendered, but shall be without prejudice to the claim of the complainants to compensation for said improvements.

It is further ordered, that the complainants pay to the defendant his costs expended in the proceedings herein, since the November term, 1834.

During the pendency of this suit, on the 25th day of November, 1834, the defendant, Walden, tendered to the court the following bill of exceptions, to wit:

Bill of Exceptions.

Memo: After the court rescinded the order, entering the final decree, the defendant, Walden, by R. Wickliffe, his counsel, presented the following answer in each case, and also offered the following cross bill, and presented to the court the records referred to, or so much thereof, as was deemed necessary to sustain the statements in the cross bill, and moved the court to permit him to file the answers to the suits respectively; and also to file the said cross bill, agreeing, that the said cross might, or not, at the election of the party, or discretion of the court, operate as a supersedeas, until the answers were filed, or that the causes might progress, the cross bill notwithstanding; but the court refused the said answers, or any of them, or the cross bill and bill for mesne profits, to be filed, to which opinion of the court, on rejecting the said answers, and each of them, and to file the cross bill and bill for the mean profits, the defendant, Walden, excepts.

THOMAS B. MONROE, [Seal.]

The following are the answers and cross bill referred to in the foregoing bill of exceptions:

Amended and Supplemental Answer of Walden.

The amended and supplemental answer of Ambrose Walden to a bill and amended bill, filed by Thomas Bodley, and Robert Pogue, Drake, and others, in the circuit court of the United States for the district of Kentucky, and to a bill filed by said Bodley and Pogue, &c., in the Fleming circuit court. This respondent not waiving his former answer, or either of them, or any part thereof, by way of amendment and supplement thereto, begs leave to answer and say,

that long before the filing of either of said bills, to wit, between the years 1790 and 1795, Lewis Craig, claiming to hold under him, entered upon his claim, and *sealed* and possessed it, by tenants, claiming to hold under your respondent, and adverse to the claim of Johnson, and that of Bodley and Pogue, and every other whatever, except the claim of your orator. That, subsequently, your orator en*terre*d himself, claiming the whole, and from the time that Craig and others took possession, his claim has been occupied by some one or other, by an actual close and residence, which entry and possession, and actual sealing and possession, continued up to the filing of the said last mentioned bill, and until this day, and which long and continued sealing and possession, this respondent relies on and insists, bars any right to the complainants to recover, especially to recover under Bodley and Pogue, whom he charges, never have had possession, unless they may be considered so by *collus*ive contracts with the complainants, or the heirs of Drake, or *their ancestor*, or, perhaps, other contracts made with the tenants of your respondent, or by *intrusions* not known to him, which, if shown or proven, he insists will be confined to *three* actual close or residences.

This respondent saith, that under the decree of the Fleming circuit court, the said Bodley and Pogue obtained a deed, and subsequently conveyed to one or more of the other complainants, or said Bodley did so; and he apprehends that several of such deeds may exist for parts of the land in contest: he also states, that from the great length of time in which he has been informed, most if not all the persons against whom he recovered judgments in his ejectments have died or moved off; and that they have been succeeded by the complainants, or those under whom they they claim, except Bodley and Pogue, who have, in some way undertaken to protect such defendants or those claiming under them with their claim, so that to recover possession under said judgments will be difficult, if not impracticable, to the full extent of his rights, and to revive his said judgments against the ter-tenants, and heirs will be attended with delay, costs and vexations too iniquitous (in his opinion) to be imposed upon him by the chancellor. He therefore prays, that if this honourable court shall decree in favor of the complainants, or any of them, any portions of the land, that this court will also decree that the complainants shall give up the possession, and release all title to such parts as they shall not manifest a better right to; and that writs of assistance be awarded him to obtain such possession, and that in this respect, equal and mutual rights and equities be protected and *guarded*. This respondent prays, &c.

WICKLIFFE.

November Term, 1834—Sworn to in open court by Robert Wickliffe.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Walden's Answer to Bill of Revivor, &c.

The answer of Ambrose Walden to a bill in equity exhibited against him, and to a bill of revivor filed by his heirs in the circuit

– of the United States for the district of Kentucky. This defendant, saving and reserving to himself all benefit of exception, saith: That he knows nothing of the title set up by David Duncan, or his heirs of his own knowledge, and therefore requires proof. That he held, and that his heirs now hold, such titles, this defendant denies. That his entry is vague and void for uncertainty, and pleads that it is special and surveyed according to its locative calls, in part, if not in the whole; but as this is a matter of law, it is referred to the court. This defendant makes his entry and patent a part of his answer. And further answering, saith: That a long time since, he thinks, between the years 1790 and 1795, one Lewis Craig, claiming to hold under your orator an undivided interest in his patented land aforesaid, entered upon the land in contest, and placed sundry persons thereon by actual settlements and residence upon the land, which settlements and residences have been continued by succession ever since. That the entry of Craig and others, was on the whole tract, and adverse to the titles set up by the complainants and all the *world*, except your orator's claim under his patent aforesaid. Your respondent charges that he became from the time of the taking the possession aforesaid, actually seized, as well as legally seized under his patent of his whole lands adverse to the claims set up in the bill, which seisin, possession, and patent this respondent pleads, and relies on as a bar to all equity alleged and set up in said bills of the complainants. This respondent for further answer alleges, that complainants, their ancestor and others, have, by injunctions heretofore obtained, kept and held your respondent out of possession of the lands until all or most of the defendants in the judgments have died or moved off, as he believes; so that to revive the suits against the heirs and ter-tenants will be difficult and expensive, if practicable at law. He further charges, that Bodley and Pogue procured a deed under their decree in Fleming county. This defendant therefore prays the court, that this court will in their decree, should they decree any part of the land to complainants, secure him against said deed to Bodley, and in the quiet possession and enjoyment of the residue to which the complainants show no title, and award him a writ of possession, &c. He denies all fraud, denies the right of the complainants to a decree, and prays his costs.

WICKLIFFE.

November Term 1834. Sworn to in open court by Robert Wickliffe.

Attest, JNO. HANNA, *C. C. C. K. D.*

Walden's Answer to a Bill in Equity.

The answer of Ambrose Walden to a bill in equity, exhibited against him by the heirs of Benj. Clark, in the circuit court of the United States, for the Kentucky district. This defendant, saving &c. saith: That he knows nothing of his own knowledge of the title alleged by the complainants, and therefore requires the usual proof to be made, that, whether the claim of Peter Johnson is surveyed ac-

cording to its locative calls, is a matter of law, which he submits to the court. This respondent says, that his entry is special, and he thinks surveyed in part according to location, and he submits this also to the court. This respondent makes his entry and patent a part of his answer. He denies the right or equity of the complainants to rely. And for further answer in bar and preclusion, saith, that about the year 1794, or before that time, Lewis Craig and others made entry upon his patent, claiming an undivided interest therein, looking to, and relying on this respondent for title; that said Craig seated, or caused said claim to be seated by actual occupancy and settlements, have been succeeded by others down to the present moment; that all the defendants against whom he recovered, as he verily believes, entered adverse to the claim of Bodley and Pogue; and he thinks many of them adverse to the claim of Johnson, which adverse possession and patent to the claim of the complainants, this respondent sets up, pleads and relies on, against the complainants; and as a bar by lapse of time against this honourable court's interfering with this respondent's possession or right of possession.

This respondent states, that he hath been injoined by the complainants and others so long, that most, if not all of the defendants in his judgment of ejectments, have either died or moved away; and to revive said suits will be attended with costs, delay and difficulty. That the said Bodley and Pogue, under their vague and void proceeding in Fleming circuit court, hath obtained a deed for your orator's land, except a small part held by Dale Carter. He therefore prays your honours, in decreeing relief to the complainants, to so far protect his rights as decreed him the possession of all not decreed to the complainants, of the land in contest, and that mutual releases shall be executed, and such other orders and decrees be made as to equity shall belong. This respondent again denying the right of the complainants to a decree for his land or any part of it, prays to be hence dismissed with his costs.

R. WICKLIFFE.

November term 1834. Sworn to in open court, by Robert Wickliffe.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Cross Bill.

To the honourable the judges of the circuit court of the United States, for the district of Kentucky, in chancery sitting, humbly complaining, Ambrose Walden, a citizen of the state of Virginia, humbly complaining, showeth unto your honours that on the —— day of —— the commonwealth of Virginia, granted to him 1333 acres of land, by patent bearing that date, but which patent contained a surplus of about —— acres. That at a very early period he caused actual possession to be taken of the land, by – thereon with a view to take possession of the whole. That at a subsequent period, one Lewis Craig, (long since dead,) to wit, between years 1790, and 1795, as he believes, and hopes to prove, claiming to hold under your orator,

entered upon the land, and settled thereon sundry tenements, he and they looking to, and relying on your orator for title, they alleging to hold by purchase by Simon Kenton, who they *further* alleg*ed* had by contract with your orator, an undivided interest in the said land; that the holding and seating of said claim, by said Craig and others, was adverse to the claim of Bodley and Pogue, and that of Fox, &c., as patentee of Johnson's settlement and pre-emption, and all other titles whatever, except your orator's. Your orator states that said tenants, holding *over, after* warned to deliver possession, he brought writs of ejectment against them, as will appear by sundry judgments in ejectment in this court; that these ejectm*ent* were first brought about the year 1797, and judgments were rendered in most of them about the period of 1798; but for better information reference is made to said judgments. That up to the time of his bringing said ejectments and the judgments thereon, he believes and charges that no one was in possession of any part of his land who did not claim to hold under him, and if any such were in possession, he charges that the possession of such an one must be limited to his actual close; but he particularly charges that up to that time neither Robert Pogue nor Thomas Bodley, nor any other claiming under them, had possession under the claim set up by them, and to be more fully hereafter stated. Your orator states, that about the period of the obtaining of his judgments, the said Bodley and Pogue, as he supposes, made some executory contracts with your orator's tenants, by which they undertook to sell, or protect them in their withholding the possession from your orator, and to effect their purpose, filed their bill with one or more of your orator's tenants, and obtained an injunction restraining your orator from taking out or executing writs of possession. That after said injunction had depended many years, and your orator's demises had expired by length of time, the said Pogue and Bodley and others, dismissed their bill. That subsequently to the dismission of the bill and dissolution of the said injunction, your orator having applied to this court, and being overruled, to extend his demises, took his case to the supreme court, and by their opinion expressed and intimated to this court, this court extended the demises to 50 years; and your —— took out writs of possession, and caused them to be executed in part, and would have been reinstated in the possession of his whole tract, except what he will hereafter set forth; but after he had executed his writs in part, as aforesaid, and leased *and* to the following tenants, he was again arrested by a new bill, and a new injunction at the instance of the said Bodley and Pogue, which is still depending before this honourable court, to which injunction your orator answered, &c.; but your orator discovered, pending this bill of injunction, that the said Bodley and Pogue had, about the time they dismissed their first bill in this court, filed a bill in chancery against your orator and others, in the Fleming circuit court, and had by some illegal and unjust proceeding, obtained a decree against your orator as a non-resident by default; and under such decree, and not withstanding the time allowed your orator to appear, had not expired, obtained a deed or

deeds for the whole of your orator's land, except about 150 acres as sold by your orator to his tenant Dale Carter, who defended and obtained a decree; your orator states, having the discovery of the pendency of said decree, that he entered his appearance in the Fleming circuit court, and on his petition removed the case to this court.

Your orator states that a certain Duncan, who succeeded to the possession under the claim of your orator, or under the persons, or some of them evicted, filed his bill against your orator, setting up, among other things, a purchase under Bodley and Pogue; and he having departed this life, the suit has been revived in the name of his heirs; that a certain Clark having, by some means, after he was settled under your orator, connected himself with Fox, &c.'s claim, or after – had revived against the tenants, connected himself with Johnson's claim, and perhaps that of Bodley and Pogue, and others, filed his bill and obtained his injunction, which was dismissed for the want of prosecution; and after your orator had obtained possession, and leased, in part, as aforesaid, the heirs of Clarke filed their bill, and obtained their injunction: that he answered the bill of Bodley, Pogue, &c., but has filed no answer to the bills of revivor; but as he believes and charges, the said suit was revived in the names of the heirs of Bodley and Pogue, and the other complainants, by consent; that no answers have been filed as to the cases of Duncan's heirs and Clarke's heirs, but answers to those bills, as well as a supple– answer to Bodley's bill, are herewith tendered to be filed. Your orator states that said Bodley and Pogue, or one of them, before and after the commissioners' deed before referred to, made sundry deeds for parcels of the land in controversy in the suits before referred to; and your orator is apprehensive that said Bodley's and Pogue's heirs, or thei– alienees, intend to rely on those deeds to still further harass him, after the suits aforesaid shall be decided by this court. Your orator states that most, if not the whole of the defendants, against whom he obtained judgments at law, have either died, or departed from the state; so that to revive the suits or judgments at law, will be attended with great hazard, expense, and delay, if it be at all practicable, at this late day, to obtain the possession under said judgments. He also states, that the rents and profits of the land have been very great, all of which he is in justice and equity entitled to, from the date of his demise, and all of which he fears he will be defrauded of, unless they are decreed him in equity: he therefore makes the judgments at law, the suits of equity, and deeds referred to, a part of this bill, and makes this bill a cross bill in the suits aforesaid, now pending before this court, and makes each and all of the complainants in said bills, defendants in this suit; and prays of the court the process of spd. against the said complainants, by which they, the said complainants, made defendants to this bill, may full, true, and perfect answers make to all and singular the allegations of this bill, in as full and perfect a manner as if they were repeated in the form of interrogatory; and by a decree of your honours, may the deed of the commissioners to the said Thomas Bodley, and the deeds made by them to the complainants, or any of them, so far as

your orator is or may have rights and interests in the land embraced by them; and should this court, on the final hearing of the said cause, or either of them, dissolve said injunctions, or any of them, in whole or in part, then your orator prays that he be put into the possession of so much land as your *orator shall so* dissolve said injunctions, or any of them for, and to decree to your orator deeds of release from the defendants therefore; and, further, that an account of the rents, issues, and profits of the said land, or so much thereof as said injunction, or any of them, shall be so dissolved, be taken and ascertained; and whatever there shall be, or whatever shall be the amount or value thereof, be decreed to your orator; and in all or any judgment or decree which may be rendered, that the rights and interests of Dale Carter be protected. And the premises considered, may it please your honours to grant to your orator such other and further relief as to equity shall belong, and he will ever pray, &c.

R. WICKLIFFE,
For Complainant.

R. Wickliffe makes oath, that so far as the foregoing bill contains statements from his own knowledge, it is true; and so far as is stated from papers and records, or the information of others, he believes it to be true. He further states, that it did not appear to him, as counsel, to be necessary to file the bill before this time; but that he considers it now necessary, if not indispensable, to have justice done to his client in the suits to which it refers.

R. WICKLIFFE.

The counsel for the complainants and for the defendant had brought all four of the cases to hearing, and they were heard under the belief that the agreement, entered of record at the May Term, 1831, embraced the case of Duncan, and so the court understood the matter on the hearing of the causes; and the counsel for the defendant admitted, that the case of Duncan was intended to be included, but was accidentally omitted in said agreement; and he had always supposed the case was included in it, until after the setting aside of the decree abovementioned. Upon the omission of the said case of Duncan being afterwards mentioned by the court, the counsel of the complainants offered that the said agreement might be now corrected, so as to embrace Duncan's case, as if it had been so written originally; and the court stated to defendant's counsel that it might so done; but the counsel of the defendant declined the proposition, and insisted on filing the answer *stated* in the above exception.

The following are copies of the records referred to in the foregoing cross bill, to wit:

Walden's Lessee vs. *Rose and Craig.*

Pleas before the honourable Harry Innes, judge of the district court of the United States of America, in and for the district of Kentucky, at the June term of said court, in the year 1800.

Be it remembered, that heretofore, to wit, at a court of the United States of America, held in and for the Kentucky district, at the capitol, in the town of Frankfort, in the month of March, A. D. 1797, came John Den, lessee of Ambrose Walden, and exhibited a certain bill (in an action of trespass and ejectment) against Richard Fen, the casual ejector, which follows in these words, viz:

Decision.

Kentucky District, to wit:

John Den complains of Richard Fen, in custody, &c. for that, to wit: That, whereas Ambrose Walden, on the fifteenth day of August, in the year of our Lord one thousand seven hundred and eighty-nine, (1789) in Mason county, in Kentucky district, aforesaid, had demised and granted, and to farm let, to the said John Den, four dwelling-houses, twenty out-houses, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of woodland, with the appurtenances; situate, lying and being on the waters of John's fork, of Licking, in Mason county aforesaid, to have and to hold the said premises, with the appurtenances, to the said John Den, and his assigns, from the date of the said lease, unto the full end and term of ten years, from thence next ensuing and fully to be complete and ended; by virtue of which said demise, the said John Den entered into the said tenements with the appurtenances, and was thereof possessed, until the said Richard Fen, afterwards, to wit, on the day and year aforesaid, in the county and district aforesaid, with force and arms, &c. entered on the tenements aforesaid, with the appurtenances, in, and upon the possession of the said John Den, and ejected, drove out and removed the said John Den from his said farm, his said term not being yet expired; and kept out, and still keeps out, the said John Den, so ejected, drove out, and removed from his said possession; and then and there did other injuries to him, against the peace, and to the damage of the said John Den, sixty dollars, and thereupon he brings suit, &c.

WILLIAM CLARKE,
For Plaintiff.

Pledges to prosecute, John Doe and Richard Roe.

Notice.

I am informed that you are in possession of, or claim title to the premises in this declaration in ejectment mentioned, or to some part thereof; and I being sued in this action as casual ejector, and having no claim or title to the said premises, do advise you to appear on the first day of the next March term, in the court of the United States, for the district aforesaid, by some attorney of that court, and then and there, by rule of the said court, cause yourself to be made defendant in my stead; otherwise I shall suffer judgment to be entered against me, and you will be turned out of possession.

Your loving friend,

28*th January*, 1797. RICHARD FEN.

Bourbon County, sct.

On the twenty – day of February, one thousand seven hundred and ninety-seven, came Thomas M'Glanton before me, the subscriber, one of the justices of the peace for said county, and made oath, that on the seventeeth day of this present month, February, he did deliver a copy of the foregoing declaration and notice on the premises in the foregoing declaration mentioned, unto Jonathan Rose, he being in possession of part of the premises in the said declaration mentioned; and that he also on said day, did deliver another copy of the said declaration and notice to the wife of Charles Rutter, one other tenant in possession of other part of the premises in the said declaration mentioned; and also, on the same day, did deliver a copy of the said declaration and notice to the wife of Willam Allen, one other tenant, in possession of another part of the premises in the said declaration of ejectment mentioned; and this deponent saith, that he told them all severally, that it was a declaration in ejectment, and, unless they did appear by some attorney of the court of the United States for said district, the next ensuing term, there would be judgment thereupon against the defendants by default, and they would be turned out of possession, or words to that effect.

WILL. NEALE.

And afterwards, to wit, at the term aforesaid, the following order was made herein, viz:

Common Order.

"It appearing to the court by satisfactory proof, that the defendants herein have been regularly served with the plaintiff's declaration, and having failed to appear and plead to the plaintiff's said action, it is therefore ordered by the court, that the said defendants appear here on the first day of the next term and cause themselves to be made defendants herein; receive a declaration in a plea of trespass and ejectment, confess the lease, entry and ouster therein, and plead thereto, or on failure thereof (they severally having notice of this order), judgment shall be rendered against the casual ejector and the writ of habere facias possessionem be awarded the plaintiff."

And afterwards, to wit, at the March term, in the year one thousand seven hundred and ninety-eight, the following order was made herein, viz:

Craig and Rose admitted Defendants.

"On motion, It is ordered by the court and by the assent of the parties, that Lewis Craig, together with the defendant, Jonathan Rose, be made defendants in this suit, instead of the casual ejector, Richard Fenn, and that he will immediately appear to the plaintiff's action and receive a declaration in ejectment, confess the lease, entry and ouster therein supposed, and plead thereto not guilty, and agree to insist upon the title only at the trial. And it is further ordered, that, if upon the trial of the issue, a judgment should be given for the defendants, or the plaintiff should not further prosecute for any

other cause than the not confessing the lease, entry and ouster, that the lessors of the plaintiff shall pay the costs of this prosecution if the plaintiff himself does not pay them."

Lease &c. confessed.

Whereupon the said defendants by *his* attorney confess the lease, entry and ouster in the declaration supposed, and agrees to insist upon the title only at the trial; and the said defendants come and defend the force and injury, when, and where, &c., and say they are in nowise guilty of the trespass and ejectment in manner and form as the plaintiff hath against him complained; and of this he puts himself upon the country, and the plaintiff doth so likewise; therefore, let a jury come, &c.

Order of Survey.

And it is further ordered, that Miles W. Conway, do go on the land in controversy between the parties on the —— day of —— next, if fair; if not, then on the next fair day, and there lay off the same as either party may direct, having regard to all deeds and other evidence, report all matters of fact specially, and return four fair plats and certificates into the clerk's office of this court before the day of hearing; and the sheriff of Mason county is directed to attend the said surveyor, to remove force should any be offered; and further proceedings are continued until the next court.

And afterwards, to wit, on the —— day of —— one thousand seven hundred and —— (until which time, this case was continued), the following special case was submitted to the court by the counsel herein, viz:

Special Case submitted by Consent.

The tract of land marked on the plat by the letters A B C D, was duly granted to the said Walden, lessee of the plaintiff, by patent from the commonwealth of Virginia, bearing date the twenty-first day of November, one thousand seven hundred and eighty-six.

The said Walden, and Simon Kenton, executed the agreement marked A, respecting the locating of said lands; the said agreement is made a part of this case.

The defendants are in possession of that part of the tract marked on the plat by the letters E F G C, and claim the said part of the said tract of land under the said agreement marked A, and the endorsement thereon, and a division thereof made as certified by the report B; which report and endorsement on said agreement, is also made a part of this case.

If, upon the whole, the court shall be of opinion, that the legal title to the said part of the said tract of land marked on the plat as aforesaid by the letters E F G C, is in the plaintiff, then judgment to be entered for him; if not, judgment to be entered for the defendant.

WM. CLARKE,
Attorney for Plaintiff.
THOS. TODD,
Attorney for Defendant.

And now, at this day, to wit, at the June term, in the year of our Lord one thousand eight hundred, the following judgment was given herein, viz.

Judgment.

"The court having fully considered and understood the said case, is of opinion that the legal title to the said part of the said tract of land marked on the plat E F G C, is in the plaintiff, and was on the day of filing the declaration in said suit. It is therefore considered by the court, that the plaintiff recover against the said defendants, Lewis Craig, and Jonathan Rose, his term of and in the premises aforesaid, with the appurtenances, yet to come and unexpired, together with his costs by him in this behalf expended; and the said defendants in mercy," &c.

And on motion of the plaintiff, by his attorney, the United States writ of habere facias possessionem is awarded him in this suit, to cause him to have possession of the term aforesaid, returnable to the next court.

The following exhibits appear filed herein, viz.

Deed of the Commissioners of Mason County, &c.

"Mason County, to wit: We, the commissioners appointed by the worshipful the court of Mason aforesaid, for the purpose of dividing lands held in partnership between citizens of this commonwealth and non-residents, and being called on to divide a tract of land containing one thousand three hundred and thirty-three acres, patented in the name of Ambrose Walden, between him the said Ambrose and Lewis Craig, assignee of Craig and Johnson, and assignee of Simon Kenton, the locator of the said tract, two-thirds of which said tract is the property of the said Walden, and the other third the property of the said Lewis Craig, as aforesaid, proceeded this day to divide the same in the said proportions; that is to say, one-third to the said Craig, and the remaining two-thirds to the said Ambrose Walden, as follows, to wit:—Beginning at Walden's south-east corner, a mulberry, buckeye, Spanish oak, and ash, called for in the original patent; thence north twenty-two east, with the old line one hundred and fifty-five poles, to two white ashes and sugar tree; thence north sixty-one degrees west, three hundred and twenty-nine poles, to a walnut and two red oaks in Johnson's line; thence south fifty-one west, with Johnson's line one hundred and sixty-eight poles, to three white oaks in John Walden's line; thence to the beginning: containing three hundred and twenty acres. To have and to hold the said quantity of three hundred and twenty acres, to him the said Lewis Craig, his heirs and assigns for ever, free and clear from the let, molestation, and hindrance of him the said Ambrose Walden, his heirs, &c., for ever, and to hold to him the said Lewis Craig, his heirs, &c., in severalty, and no longer subject to the claim of him, the said Walden. Also divided the said tract of land as follows, to wit:—Beginning at two white ashes and sugar tree, in John Walden's line and corner, to Lewis Craig; thence north twenty-two

east, three hundred and seventy-five poles, to a red oak and honey locust; thence N. 68 west, two hundred and sixty poles, to a white oak and box elder, in Jacob Johnson's line; thence with said line south 39 east, 112 poles to two buckeyes and white oak, east corner to the said Johnson's; thence S. 51 W., 340 poles, to a walnut and two red oaks, corner to Lewis Craig; thence S. 61 E., 369 poles, to the beginning; to have and to hold the said tract of land, containing 640 acres, to him the said Ambrose Walden, and his heirs, &c., for ever, in severalty, and free and clear from the claim of him the said Lewis Craig, as assignee as aforesaid, and his heirs and assigns for ever.

And we, the said commissioners, do certify and declare, that the residue of the said survey, in the name of the said Ambrose Walden, is intersected with by a certain claim in the name of Jacob Johnson, and therefore not divided, but is, on that account, left in *tenuary* in common between the said Ambrose Walden, and the said Lewis Craig, and subject to a future division, as the event of the said interference may justify.

In witness whereof, we, the said commissioners, have hereunto set our hands, and affixed our seals, this tenth day of February, 1794.

Signed, sealed, and delivered before } DAVID MORRIS, [Seal.] D. V. PAYNE, [Seal.]

Mason County, sct. April Court, 1797.

This division of lands between Walden and Craig, was returned by the commissioners, and ordered to be recorded.

Teste, THOMAS MARSHALL, J.O.M'C.

Agreeement between Kenton and Walden.

Articles of agreement made and done this 1st day of May, 1780, between Simon Kenton of Kentucky, of the one part, and Ambrose Walden, of Carolina county, Virginia, witnesseth: that the said Simon Kenton doth bind himself to locate ten thousand acres for the said Ambrose Walden, in the district of Kentucky, in consideration of which, the said Ambrose Walden doth bind himself, his heirs, and assigns, to convey a proper deed of one-third of the said ten thousand acres so located, unto the aforesaid Simon Kenton, respect being *held* to quality, and other local advantages; and lastly, both parties bind themselves to the performance of the premises, under the penalty of fifty thousand pounds.

Signed, sealed, and delivered in presence of } his SIMON ⋈ KENTON, [Seal.] mark. AMBROSE WALDEN, [Seal.]

AGNES CAMERON, JOSEPH CATUTE, STEPHEN HUSTON.

Assignment to John Craig.

I do assign over all my right, title, and interest of the within article, to John Craig and Robert Johnson, this 24th day of April, 1787.

JOHN WILSON, JAMES TURNER. } SIMON KENTON, [Seal.]

Assignment to Robert Johnson.

I do assign the within to Robert Johnson and Elijah Craig. Witness my hand, May the 18th, 1791.

ROBERT JOHNSON.

TOLIVER CRAIG.

Assignment to Lewis Craig.

We assign to Lewis Craig the third part of three thousand acre entry, in the name of Walden; and one-third of three thousand acre entry, in the name of John Taylor; and one-third of one thousand five hundred acres, in the name of William Nelson; John Craig's interest is only given up. December the 28th, 1793.

ROBERT JOHNSON,
Trustee to John Craig.
ELIJAH CRAIG,
Trustee to John Craig

The whole of the land is now claimed and contended for by Thomas Bodley and James Hughes.

February 10*th*, 1794.

Surveyed for Ambrose Walden, one thousand five hundred and fifty-five acres of land, situate in Mason county, and on the waters of Johnson's fork of Licking, and bounded as follows, to wit: Beginning at A, a buckeye and hoop ash stump, shown for said Walden's most northwestwardly corner; thence, S. 68°. E. 520 poles, to B, two red oaks and honey locust; thence, S. 22°. W. 530 – to C, an ash, Spanish oak, mulberry and buckeye, corner to John Walden's survey; thence, with his line, N. 61°. W. 524 poles, to D, a hickory, red oak, and white oak; thence, N. 22°. E. 424 – to the beginning. Also, divided the above land as follows, to wit: Beginning at C, an ash, Spanish oak, mulberry and buckeye; thence, N. 22°. E. with John Walden's line, 155 poles, to E, two white ashes, and sugar tree, corner to Ambrose Walden's land; thence, N. 61°. W. 329 poles, to F, a walnut, and two red oaks, in Jacob Johnson's line; thence, with the same, S. 51°. W. 168 poles, to G, three white oaks, in John Walden's line; thence, with the same, S. 61°. E. to the beginning at C, including 400 acres for Lewis Craig, as his equal third part, in quality of that part of Ambrose Walden's survey, 1333 acres, by patent, that is not included by Jacob Johnson's survey. Surveyed as the commissioners of Mason county allotted and directed.

Aso, divided the above land as follows, to wit:

Beginning at E, two white oaks and sugar tree, corner to Lewis Craig's 400 acres; thence, N. 22°. E. 375 poles, to B, a red oak and honey locust; thence, N. 68°. W. 260 poles, to I, a white oak and box-elder, in said Johnson's line; thence, with the same, S. 39°. E. 112 poles, to H, two buckeyes and white oak, corner to said Johnson; thence, with his line, S. 51°. W. 340 poles, to F, a walnut and two red oaks, corner to said Craig; thence, S. 61°. E. with his line to the beginning at E, including 535 acres for the said Ambrose Walden's, as his equal two-thirds in quality, all that part of said Ambrose Walden's survey of 1333 – by patent, that is not included in Jacob Johnson's survey, surveyed as the commissioners of Mason – allotted and directed; and the remaining 620 acres, known in the plat by the letters A I H G D, is that part of said Walden's survey of 1333 acres, that is claimed by a survey of Jacob Johnson's, and left undivided by the said commissioners.

WHITF'D CRAIG, *D. S. M. County.*

N. B. The within Lewis Craig's 400 acres of land was sold by said Craig to Jonathan Rose, and marked in the plat thus, J.; also, sold to William Allen, and marked in the plat thus, K.; also, sold to Mr. Rector, and marked in the plat thus, L. The said Rose, Allen and Rector, is living on the 400 acres, in plat marked Lewis Craig, and nearly as the letters point out. Surveyed by me,

WHITF'D CRAIG.

Walden's Lessee vs. *Chapin and Craig.*

Pleas, before the Honourable Harry Innes, judge of the district

court of the United States of America, in and for the district of Kentucky, at the June term, 1800.

Be it remembered, that heretofore, to wit, at a court of the United States of America, held in and for the Kentucky district, at the capitol, in the town of Frankfort, in the month of March, A. D. 1797, came John Denn, lessee of Ambrose Walden, and exhibited a certain bill, (in an action of trespass and ejectment,) against Richard Fen, the casual ejector, which follows in these words, viz:

Kentucky District, to wit:

John Den complains of Richard Fen, in custody, &c. for that, to wit: That whereas Ambrose Walden, on the 15th day of August, A. D. 1799, in Mason county, in Kentucky district aforesaid, had demised and granted, and to farm let, to the said John Den, four dwelling-houses, twenty out-houses, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of woodland, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in Mason county aforesaid; to have and to hold the said premises, with the appurtenances, to the said John Den and his assigns, from the date of the said lease, unto the full end and term of ten years from thence next ensuing, and fully to be complete and ended; by virtue of which said demise, the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed, until the said Richard Fen afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c. entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended; and kept, and still keeps out the said John Den, so ejected, drove out, and amoved, from his said possession; and then and there did other injuries to him, against the peace and to the damage of the said John Den.

WM. CLARKE,
Attorney for Plaintiff.

Pledges to prosecute, John Doe and Richard Doe.

Notice.

I am informed that you are in possession of, or claim title to the premises in this declaration of ejectment mentioned, or to some part thereof, and I being sued in this action, as casual ejector, and having no claim or title to the said premises, do advise you to appear on the first day of next March term, in the court of the United States, for the district aforesaid, by some attorney of that court, and then and there, by rule of that court, cause yourself to be made defendant in my stead, otherwise I shall suffer judgment to be entered against me, and you will be turned out of possession.

Your loving friend,

RICHARD ROE.

28*th January*, 1797.

Affidavit of Service.

Bourbon County, sct.

On the 22d day of February, 1797, came Thomas M'Glanton, before me, the subscriber, one of the justices of the peace for the said county, and made oath, that on the 17th day of this present month, February, he did deliver a copy of the foregoing declaration and notice on the premises, in the foregoing declaration mentioned, unto Amsel Chapin, he being tenant in possession of part of the premises in the said declaration mentioned; and that he also, on said day, did deliver another copy of the said declaration and notice to the wife of Charles Ruttor, one other tenant in possession of other part of the premises in the said declaration mentioned; and also, on the same day, did deliver another copy of the said declaration and notice to the wife of William Allen, one other tenant in possession of other part of the premises in the said declaration of ejectment mentioned; and this deponent further saith, that he told them all, severally, that it was a declaration in ejectment, and unless they did appear by some attorney of the court of the United States, for said district, the next ensuing term, there would be judgment thereupon against the defendants, by default, and they would be turned out of possession, or words to that effect. WILLIAM NEALL.

And afterwards, to wit, at the term aforesaid, the following order was made herein, viz:

Common Order.

"It appearing to the court, by satisfactory proof, that the defendants herein have been regularly served with the plaintiff's declaration, and having failed to appear and plead to the plaintiff's said action, it is, therefore, ordered by the court, that the said defendant– do appear here, on the first day of the next term, and cause themselves to be made defendants herein, receive a declaration in a plea of trespass and ejectment, confess the lease, entry and ouster therein, and plead thereto, or on – thereof, (they severally having notice of this order,) judgment shall be entered against the casual ejector, and the writ of habere facias possessionem awarded the plaintiff."

And afterwards, to wit, at the March term, in the year 1798, (until which time this cause was continued,) the following order was made herein, viz:

Craig and Chapin admitted Defendants.

On motion, it is ordered by the court, and by the assent of parties, that Lewis Craig, together with the defendant, Amsel Chapin, be made defendants in this suit, instead of the casual ejector, Richard Fenn, and that they will immediately appear to the plaintiff's action, and receive a declaration in ejectment, confess the lease, entry and ouster therein mentioned, and plead thereto not guilty, and agree to insist on the title only at the trial. And it is further ordered, that if, upon the trial of the issue, a verdict should be given for the defendant, or the plaintiff should not further prosecute for any other cause than the not confessing the lease, entry and ouster, that the

lessee of the plaintiff shall pay the costs of this prosecution, if the plaintiff himself does not pay them.

Plea, &c.

Whereupon, the said defendants, by their attorney, confesse the lease, entry and ouster in the declaration supposed, and agree to insist on the title only at the trial; and the said defendants come and defend the force and injury, when and where, &c., and say they are in nowise guilty of the trespass in ejectment, in manner and form, as the plaintiff against them hath complained; and of this they put themselves upon the country, and the plaintiff doth so likewise; therefore let a jury come, &c.

Order of Survey.

And it is further ordered, that Miles W. Conway do go on the land in controversy between the parties, on the —— day of —— next, if fair, if not, then on the next fair day, and then and there lay off the same, as either party may direct, having regard to all deeds and other evidence produced, report all matters of fact specially, and return four fair plats and certificates thereof into the clerk's office of this court, at least thirty days before the day of hearing; and the sheriff of Mason is directed to attend the said surveyor, to remove force, should any be offered: and further proceedings continued until the next term. And afterwards, to wit, on the —— day of —— in the year 17— (until which time this cause was continued),

The following special case was submitted to the court by consent of the parties herein, by their attorneys, viz:

Special Case submitted.

"The tract of land marked on the plat by the letters A B C D, was duly granted to the said Walden, lessor of the plaintiff, by patent from the commonwealth of Virginia, bearing date the 21st day of November, 1786. The said Walden and Simon Kenton executed the agreement marked A, respecting the locating of said lands; the said agreement is made a part of this case.

The defendants are in possession of that part of the tract of land marked on the plat by the letters E F G C, and claim the said part of the said tract of land under the said agreement A, and the endorsement thereon, and a division thereof made, as certified by the report (B); which report and endorsement on said agreement is also made a part of this case.

If, upon the whole, the court shall be of opinion, that the legal title to the said part of the said tract of land, marked on the plat as aforesaid, by the letters E F G C, is in the plaintiff, then judgment to be entered for him; if not, judgment to be entered for the defendants."

Wm. Clarke, Attorney for Plaintiff.
Thos. Todd, Attorney for Defendants.

And now, at this day, to wit, at the June term, A. D. 1800, the following judgment was pronounced herein, viz:—"The – having fully considered and understood the said case, is of opinion, that the

legal title to the said part of the said tract of land marked on the plat E F G C, is in the plaintiff, and was on the day of filing the declaration in this suit.

It is therefore considered by the court, that the plaintiff recover against the said defendants, Lewis Craig and Amzel Chapin, his term of and in the premises aforesaid, with the appurtenances yet to come and unexpired, together with his costs by him in this behalf expended; and the said defendant in mercy, &c.; and on the motion of the plaintiff, by his attorney, the United States' writ of habere facias possessionem, is awarded him herein, to cause him to have possession of the *terms* aforesaid, returnable to the next court."

(See exhibits made part of this record, copied in the case of Walden against Craig and Rose.)

RECORD. *Walden* vs. *Allen.*

Pleas before the honourable Harry Innes, judge of the district court of the United States of America, in and for the district of Kentucky, at the June term, 1800.

Be it remembered, that heretofore, to wit, at a court of the United States of America, held in and for the Kentucky district, at the capitol, in the town of Frankfort, in the month of March, A. D., 1798, came John Denn, lessee of Ambrose Walden, and exhibited a certain bill (in an action of trespass and ejectment,) against Richard Fenn, the casual ejector, which follows in these words, viz:

Kentucky District, to wit:

John Denn complains of Richard Fenn, in custody, &c. for that, whereas, Ambrose Walden, on the 15th day of August, A. D., 1799, in Mason county, in Kentucky district, aforesaid, had demised and granted, and to farm let, to the said John Denn, four dwelling-houses, twenty out-houses, fifteen acres of meadow and one hundred acres of arable land, and three hundred acres of woodland, with the appurtenances, situate, lying and being on the waters of Johnson's fork of Licking, in Mason county aforesaid; to have and to hold the said premises, with the appurtenances, to the said John Denn, and his assigns, from the date of the said lease, unto the full end and term of ten years, from thence next ensuing, and fully to be complete and ended. By virtue of which said demise, the said John Denn entered into the said tenements, with the appurtenances, and was thereof possessed, until the said Richard Fenn, afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Denn, and ejected, drove out, and amoved the said John Denn from his said farm, his said term not being yet ended; and kept out, and still keeps out, the said John Denn, so ejected, drove out, and amoved, from his said possession; and then and there did other injuries to him against the peace, and to the damage of the said John Denn, sixty dollars, and thereupon he brings suit, &c.

WM. CLARKE, For Plaintiff.

Pledges to prosecute, John Doe and Richard Roe.

Notice.

I am informed that you are in possession of, or claim title to, the premises in this declaration in ejectment mentioned, or to some part thereof; and I being sued in this action, as casual ejector, and having no claim or title to the said premises, do advise you to appear on the first day of the next March term, in the court of the United States, for the district aforesaid, by some attorney of that court, and then and there, by a rule of the said court, cause yourself to be made defendant in my stead; otherwise I shall suffer judgment to be entered against me, and you will be turned out of possession.

Your loving friend,

28*th January*, 1797. RICHARD FENN.

Affidavit of Service.

Bourbon County, sct.—On the 22d day of February, 1797, came Thomas M'Glanton before me, the subscriber, one of the justices of the peace for said county, and made oath that he, on the 17th day of this instant month, February, he did deliver a copy of the foregoing declaration and notice on the premises in the foregoing declaration mentioned, unto each of the following persons, to wit: Amzel Chapin, Abraham Shockey and Jonathan Rose, each being tenant in possession of part of the premises in the said declaration mentioned; and that he also, on said day, did deliver another copy of the said declaration and notice to the wife of Charles Rector, one other tenant in possession of other part of the premises in the said declaration mentioned; and also on the same day did deliver one other copy of the said declaration and notice to the wife of William Allen, another tenant in possession of other part of the premises in the said declaration of ejectment mentioned. And this deponent further saith, that he told them all, severally, that it was a declaration in ejectment; and unless they did appear by some attorney of the court of the United States, for said district, the next ensuing term, there would be judgment thereupon against the defendant by default, and they would be turned out of possession, or words to that effect. WILL. NEALL.

Common Order.

And afterwards, to wit, at the term aforesaid, the following order was made herein, viz: "It appearing to the court, by satisfactory proof, that the defendants herein have been regularly served, with the plaintiff's declaration; and having failed to appear, and plead to the plaintiff's said action, it is therefore ordered by the court, that the said defendants appear here on the first day of the next term, and cause themselves to be made defendants herein, receive a declaration in a plea of trespass and ejectment, confess the lease, entry and ouster therein, and plead thereto, or on failure thereof (they severally having notice of this order) judgment shall be entered against the casual ejector, and the writ of habere facias awarded the plaintiff." And afterwards, to wit, at the March term, in the year 1798, (until which time this cause was continued,) the following order was made herein, viz.

Lewis Craig, &c. admitted Defendants.

On motion, It is ordered by the court, and by the assent of parties, that Lewis Craig, together with the defendant, William Allen, be made defendants to this suit, instead of the casual ejector, Richard Fenn; and that they will immediately appear to the plaintiff's action, and receive a declaration in ejectment, confess the lease, entry and ouster therein mentioned, and plead thereto not guilty, and agree to insist upon the title only at the trial. And it is further ordered, that if upon the trial of the issue a judgment should be given for the defendant, or the plaintiff should not further prosecute for any other cause than the not confessing the lease, entry, and ouster, that the lessors of the plaintiff shall pay the cost of this prosecution if the plaintiff himself does not pay them.

Plea, &c.

Whereupon, the said defendants, by their attorney, confess the lease, entry and ouster, in the declaration supposed, and agree to insist upon the title only at the trial; and the said defendants come and defend the force and injury when and where, &c., and say, they are in no wise guilty of the trespass in ejectment, in manner and form as the plaintiff against them hath complained; and of this they put themselves upon the country, and the plaintiff doth so likewise; therefore let a jury come, &c.

Order of Survey.

And it is further ordered, that Miles W. Conway do go on the land in controversy between the parties, on the —— day of —— next, if fair, if not, then on the next fair day, and then and there lay off the same as either shall direct, having regard to all deeds and other evidence, and report all matters of fact specially, and return four fair plats and certificates into the clerk's office of this court, before the day of hearing; and the sheriff of Mason is directed to attend the said surveyor, to remove force should any be offered; and further proceedings are continued until the next term.

And afterwards, to wit, on the —— day of ——, in the year 17—, (until which time this cause was continued), the following special case was submitted to the court by the consent of the parties, viz.

Special Case submitted.

"The tract of land marked on the plat by the letters A B C D, was duly granted to the said Walden, lessor of the plaintiff, by patent from the commonwealth of Virginia, bearing date the 21st day of November, 1786.

The said Walden and Simon Kenton executed the agreement, marked A, respecting the locating of said lands; the said agreement is made a part of this case.

The defendants are in possession of that part of the tract marked on the plat by the letters E F G C, and claim the said part of the said tract of land under the said agreement A, and the endorsement thereon, and a division thereof made, as certified by the report B;

which report and endorsement on said agreement is also made a part of this case.

If, upon the whole, the court shall be of opinion that the legal title to the said part of the said tract of land, marked on the plat as aforesaid, by the letters E F G C, is in the plaintiff, then judgment to be entered for him; if not, judgment to be entered for the defendants.

WM. CLARKE, Attorney for plaintiff.
THOS. TODD, Attorney for defendants.

And now, at this day, to wit, at the June term, 1800, the following judgment was pronounced herein, viz.

Judgment.

The court, having fully considered and understood the said case, is of opinion, that the legal title to the said part of the said tract of land, marked on the plat E F G C, is in the plaintiff, and was on the day of filing the declaration in this suit.

It is therefore considered by the court, that the plaintiff recover against the said defendants, Lewis Craig and William Allen, his term of and in the premises aforesaid, with the appurtenances, yet to come and unexpired, together with his costs by him in this behalf expended; and the said defendants in mercy, &c.

And, on the motion of the plaintiff, by his attorney, the United States' writ of habere facias possessionem is awarded him herein, to cause him to have possession of the term aforesaid, with the appurtenances, returnable to the next court.

(See exhibits made part of this record, copied in the case of Walden *v.* Rose and Craig.)

RECORD. *Walden* vs. *Rutter, &c.*

Pleas before the honourable Harry Innes, judge of the district court of the United States of America, in and for the district of Kentucky, at the June term, 1800.

Be it remembered, that heretofore, to wit, at a court of the United States of America, held in and for the Kentucky district, in the month of March, in the year 1798, at the capitol, in the town of Frankfort, came John, lessee of Ambrose Walden, and exhibited a certain bill in an action of trespass in ejectment, against Richard Fenn, the casual ejector, which follows, in these words, viz:

Kentucky District, to wit:

John Denn complains of Richard Fenn, in custody, &c. for that, to wit: That whereas, Ambrose Walden, on the 15th day of August, A. D., 1789, at Mason county, in Kentucky district, aforesaid, had demised and granted, and to farm let, to the said John Denn, four dwelling-houses, twenty out-houses, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of woodland, with the appurtenances, situate, lying and being on the waters of Johnson's fork of Licking, in Mason county aforesaid; to have and to hold the said premises, with the appurtenances, to the said John Denn, and his heirs, from the date of the said lease, unto the

full end and term of ten years from thence next ensuing, and fully to be completed and ended. By virtue of which said demise, the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed until the said Richard Fen afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements and premises aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Denn from his said farm, his said term not being yet expired; and kept out and still keeps out, the said John Denn, so ejected, drove out, and amoved, from his said possession; and then and there did other injuries to him against the peace, and to the damage of the said John Den, sixty dollars, and thereupon he brings suit, &c. WM. CLARKE, for Plaintiff.

Pledges, &c. John Doe and Richard Roe.

Notice.

I am informed that you are in possession of, or claim title to the premises in this declaration in ejectment mentioned, or to some part thereof; and I being sued in this action as casual ejector, and having no claim or title to the said premises, do advise you to appear on the first day of next March term, in the court of the United States for the district aforesaid, by some attorney of that court, and then and there, by rule of said court, cause yourself to be made defendant in my stead; otherwise I shall suffer judgment to be entered against me, and you will be turned out of possession.

Your loving friend,

28th January, 1797. RICHARD FEN.

Affidavit of Service.

Bourbon County, sct.

On the 22d day of February, 1797, came Thomas M'Glanton, before me, the subscriber, one of the justices of the peace for said county, and made oath on the seventeenth day of this present month, February, he did deliver a copy of the foregoing declaration and notice on the premises in the foregoing declaration mentioned, unto Abraham Shockey, he being tenant in possession of the premises in the said declaration mentioned; and that he also, on the said day, did deliver another copy of the said declaration, and notice to the wife of Charles Rutter, one other tenant in possession of another part of the premises in the said declaration mentioned; and, also, on the same day, did deliver another copy of the said declaration and notice to the wife of William Allen, one other tenant in possession of other part of the premises in the said declaration of ejectment mentioned. And this deponent further saith, that he told them all, severally, that it was a declaration in ejectment, and, unless they did appear by some attorney of the United States for said district, the next ensuing term, there would be judgment thereupon against the defendant by default, and they would be turned out of possession, or words to that effect. WM. NEALL.

Common Order.

And afterwards, to wit, at the term aforesaid, the following order was made herein viz:

It appearing to the court, by satisfactory proof, that the defendants herein have been regularly served with the plaintiff's declaration, and having failed to appear and plead to the plaintiff's said action, it is therefore ordered by the court, that the said defendants appear here on the first day of the next term, and cause themselves to be made defendants herein, receive a declaration in a plea of trespass and ejectment, confess the lease, entry, and ouster therein, and plead thereto, or on failure thereof, (they having severally notice of this order,) judgment shall be entered against the casual ejector, and the writ of habere facias possessionem awarded the plaintiff.

And afterwards, to wit, at the March term, in the year 1798, (until which time this cause was continued,) the following order was made herein, viz:

Craig, &c., admitted Defendants.

On motion, it is ordered by the court, and by the assent of parties, that Lewis Craig, together with the defendant, Charles Rutter, be made defendants to the suit, instead of the casual ejector, Richard Fenn, and that they will immediately appear to the plaintiff's action, and receive a declaration in ejectment, confess the lease, entry, and ouster therein mentioned, and plead thereto not guilty, and agree to insist upon the title only at the trial. And it is further ordered, that if, upon the trial of the issue, a judgment should be given for the defendant, or the plaintiff should not further prosecute for any other cause than the not confessing the lease, entry, and ouster, that the lessor of the plaintiff shall pay the costs of this prosecution, if the plaintiff himself does not pay them.

Plea, &c.

Whereupon the said defendants, by their attorney, confess the lease, entry, and ouster, in the declaration supposed, and agree to insist upon the title only at the trial; and the said defendants come and defend the force and injury, when and where, &c., and say they are in nowise guilty of the trespass in ejectment, in manner and form, as the plaintiff — them hath complained; and of this they put themselves upon the country, and the plaintiff – so likewise; therefore let a jury come, &c.

Order of Survey.

And it is further ordered, that Miles W. Conway do go on the land in controversy between the parties, on the —— day of —— next, if fair, if not, then on the next fair day, and then and there lay off the same, as either party shall direct, having regard to all deeds and other evidence that may be produced, and report all matters of fact specially, and return four fair plats and certificates thereof, into the clerk's office of this court, before the day of hearing; and the sheriff of Mason county is directed to attend the said surveyor, to remove force should any be offered; and further proceedings continued until the next term.

And, afterwards, to wit, on the —— day of —— 17 — (until which time this cause was continued), the following special case was submitted to the court, by the consent of the parties, viz:

Special Case submitted.

The tract of land marked on the plat by the letters A B C D, was

duly granted to the said Walden, lessor of the plaintiff, by patent from the commonwealth of Virginia, bearing date the 21st day of November, 1786.

The said Walden and Simon Kenton executed the agreement marked (A), respecting the locating of said lands; the said agreement is made a part of this case.

The defendants are in possession of that part of the tract marked on the plat, by the letters E F G C, and claim the said part of the said tract of land, under said agreement, A, and the endorsement thereon, and a division thereof made as certified by the report, B; which report and endorsement on said agreement is also made a part of this case.

If, upon the whole, the court shall be of opinion that the legal title to the said part of the said tract of land, marked on the plat as aforesaid, by the letters E F G C, is in the plaintiff, then judgment to be entered for him; if not, judgment to be entered for the defendants.

WM. CLARKE, Attorney for plaintiff.
THOS. TODD, Attorney for defendants.

And now, at this day, to wit, at the June term, in the year 1800, the following judgment was pronounced herein, viz:

The court having fully considered and understood the said case, is of opinion, that the legal title to the said part of the said tract of land, marked on the plat E F G C, is in the plaintiff, and was on the day of filing the declaration in this suit.

Judgment.

It is therefore considered by the court, that the plaintiff recover against the defendants, Lewis Craig and Charles Rutter, his term of and in the premises aforesaid, with the appurtenances, yet to come and unexpired; together with his costs in this behalf expended: and the said defendants in mercy, &c.

And on the motion of the plaintiff, by his attorney, the United States' writ of habere facias possessionem, is awarded him herein, to cause him to have possession of the term aforesaid, with the appurtenances, returnable to the next court. (See exhibits, made part of this record; copied in the case of Walden v. Rose and Craig.)

Walden vs. *Shockey.*

Pleas before the honourable Harry Innes, judge of the district court of the United States of America, in and for the district of Kentucky, at the June term, 1800.

Be it remembered, that heretofore, to wit, at a court of the United States of America, held in and for the Kentucky district, at the capitol, in the town of Frankfort, in the month of March, A. D. 1798, came John Denn, lessee of Ambrose Walden, by his attorney, and exhibited a certain bill (in an action of trespass and ejectment) against Richard Fen, the casual ejector, which follows in these words, viz:

Kentucky District, to wit:

John Den complains of Richard Fen, in custody, &c. for that, to wit, that whereas, Ambrose Walden, on the 15th day of August, A. D. 1799, in Mason county, in Kentucky district aforesaid, had demised, granted, and to farm let, to the said John Den, four dwelling-houses, twenty out-houses, fifteen acres of meadow, one hundred acres

of arable land, and three hundred acres of woodland, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in Mason county aforesaid; to have and to hold the said premises, with the appurtenances, to the said John Den, and his assigns, from the date of the said lease, until the full end and term of ten years, from thence next ensuing and fully to be complete and ended; by virtue of which said demise, the said John Den entered into the said tenements with the appurtenances, and was thereof possessed, until the said Richard Fen, afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c. entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den, from his said farm, his said term not being yet ended; and kept out, and still keeps out, the said John Den, so ejected, drove out and amoved from his said possession; and then and there did other injuries to him, against the peace, and to the damage of the said John Den, sixty dollars; and thereupon, he brings suit, &c.

WM. CLARKE, Attorney for Plaintiff.
Pledges to prosecute, John Doe and Richard Roe.

Notice.

I am informed that you are in possession of, or claim title to the premises in this declaration of ejectment mentioned, or to some part thereof; and I being sued as casual ejector in this action, and having no claim or title to the said premises, do advise you to appear on the first day of next March term, in the court of the United States for the district aforesaid, by some attorney of said court, and then and there, by rule of that court, cause yourself to be made defendant in my stead; otherwise I shall suffer judgment to be entered against me, and you will be turned out of possession.

Your loving friend,
28*th January*, 1797. RICHARD FEN.

Affidavit of Service.

Bourbon County, sct.

On the 22d day of February, 1797, Thomas M'Glanton came before the subscriber, one of the justices of the peace for said county, and made oath, that on the 17th day of this present month, February, he did deliver a copy of the foregoing declaration and notice on the premises in the foregoing declaration mentioned, unto Abraham Shockey, he being tenant in possession of part of the premies in the said declaration mentioned; and that he also, on said day, did deliver another copy of the said declaration and notice to the wife of Charles Rutter, one other tenant in possession of another part of the premises in the said declaration mentioned; and also, on the same day, did deliver another copy of the said declaration and notice to the wife of William Allen, one other tenant in possession of other part of the premises in the said declaration of ejectment mentioned: and this deponent further saith, that he told them all, severally, that it was a declaration in ejectment; and unless they did appear by some attorney of the court of the United States for said district, the next ensuing term, there would be judgment thereupon against the de-

fendants by default, and they would be turned out of possession, or words to that effect. WM. NEALL.

And afterwards, to wit, at the term aforesaid, the following order was made herein, viz:

Common Order.

"It appearing to the court, by satisfactory proof, that the defendants herein have been regularly served with the plaintiff's declaration, and having failed to appear and plead to the plaintiff's said action, it is therefore ordered by the court, that the said defendants appear on the first day of the next term, and cause themselves to be made defendants herein; receive a declaration in a plea of trespass and ejectment, confess the lease, entry and ouster therein, and plead thereto; or on failure thereof (they having notice of this order,) judgment shall be entered against the casual ejector, and the writ of habere facias possessionem awarded the plaintiff."

And afterwards, to wit, at the March term, in the year one thousand seven hundred and ninety-eight, the following order was made herein, viz:

On motion, it is ordered by the court, and by the assent of parties, that Lewis Craig, together with the defendant, Abraham Shockey, be made defendants to this suit, instead of the casual ejector, Richard Fen; and that they will immediately appear to the plaintiff's action, and receive a declaration in ejectment, confess the lease, entry and ouster, therein mentioned, and plead thereto not guilty, and agree to insist upon the title only at the trial. And it is further ordered, that if upon the trial of the issue, a verdict should be given for the defendant, or the plaintiff should not further prosecute for any other cause than the not confessing the lease, entry and ouster, that the lessors of the plaintiff shall pay the costs of this prosecution, if the plaintiff himself doth not pay them.

Plea, &c.

Whereupon the said defendants, by their attorney, confess the lease, entry and ouster, in the declaration supposed, and agree to insist upon the title only at the trial; the said defendants come and defend the force and injury, when and where, &c., and say they are in nowise guilty of the trespass in ejectment, in manner and form as the plaintiff against *him* hath complained; and of this they put themselves upon the country, and the plaintiff doth so likewise.

Order for Survey.

And it is further ordered, that Miles W. Conway do go on the land in controversy between the parties, on the —— day of —— next, if fair; if not, then on the – fair day, and there lay off the same as either party shall direct, having regard to all deeds and other evidence that may be produced, and return four fair plats and certificates into the clerk's office of this court, before the day of hearing; and the sheriff of Mason county is directed to attend said surveyor, to remove force should any be offered.

And further proceedings are continued until the next court.

And afterwards, to wit, on the —— day of —— A. D. 17—, the following special case was submitted to the court by the consent of parties, by their attorneys, viz:

Special Case.

"The tract of land marked on the plat by the letters A B C D, was duly granted to the said Walden, lessor of the plaintiff, by patent, from the commonwealth of Virginia, bearing date the 21st day of November, 1786.

"The said Walden and Simon Kenton executed the agreement, marked (A), respecting the locating of said lands: the said agreement is made a part of this case. The defendants are in possession of that part of the tract, marked on the plat by the letters E F G C, and claim the said part of the said tract of land under the said agreement (A), and the endorsement thereon, and a division thereof made, as certified by the report (B); which report and endorsement on said agreement is also made a part of this case.

"If, upon the whole, the court shall be of opinion that the legal title to the said part of the said tract of land, marked on the plat as aforesaid, by the letters E F G C, is in the plaintiff, then judgment to be entered for him; if not, judgment to be entered for the defendants."

Wm. Clarke, Attorney for plaintiff.
Thos. Todd, Attorney for defendants.

And now at this day, to wit, at the June term, 1800, (until which time this cause was continued) the following judgment was pronounced herein, viz:

The court having fully considered and understood the said case, is of opinion that the legal title to the said part of the said tract of land, marked on the plat E F G C, is in the plaintiff, and was on the day of filing the declaration in this suit.

It is therefore considered by the court, that the plaintiff recover against the said defendants, Lewis Craig and Abraham Shockey, his term of and in the premises aforesaid, with the appurtenances, yet to come and unexpired, together with his costs, by him in this behalf expended; and the said defendants in mercy, &c. And on the motion of the plaintiff, by his attorney, the United States' writ of habere facias possessionem is awarded him in this suit, to cause him to have possession of the terms aforesaid returnable to the next court.

(See exhibits, made part of this record, copied in the case of Walden *vs.* Craig and Rose.)

Thomas Bodley, &c. vs. *Ambrose Walden.*

Pleas before the honourable Thomas Todd and Harry Innes, judges of the seventh circuit court of the United States of America, in and for the Kentucky district, holden at the capitol, in the town of Frankfort, at the May term of said court, in the year 1809.

Be it remembered, that heretofore, to wit, on the 22d day of August, 1800, came Thomas Bodley, &c., into the clerk's office of the district court of the United States, in and for the Kentucky district, and filed the following bill against Ambrose Walden, to wit:

"To the honourable the judge of the court of the United States, for the Kentucky district, in chancery sitting, humbly complaining, showeth unto your honour, your orators, Thomas Bodley, Robert Pogue, Robert Campbell, and James Hughes, citizens of the state of Kentucky, that on the —— day of —— 178–, Henry Crutcher and

John Tibbs made the following entry with the county surveyor, to wit: Henry Crutcher and John Tibbs enters 10,000 acres of land on a treasury warrant, No. 18747, as tenant– in common: Beginning at a large black ash and small buckeye, marked thus, I T, on the side of a buffaloe road, leading from the lower Blue Lick a north-east course, and about seven miles N. E. by east, from the said Blue Licks, a corner of an entry of 20,000 acres, made in the name of John T*a*bbs, John Clarke, John Sharpe, David Blanchard, and Alexander M'Lean; running thence with the said T*a*bbs, &c.'s line, due east 1600 poles; thence south 1000 poles; thence west 1600 poles; thence north 1000 poles, to the beginning, for quantity; as by an attested copy of the said entry hereto annexed, and which your orators pray may be made a part of this bill, will appear.

Your orators further show, that on the —— day of —— the said entry was surveyed according to location, and to law; and Henry Croucher assigned his proportion of the land on the plat and certificate of survey, to Robert Rutherford; and Willoughly Tibbs, heir at law of the said John Tibbs, sold, after the patent had issued to him and Robert Rutherford, his interest to John Peyton, and conveyed it to him, who sold one moiety thereof to Charles Magill; and your orators purchased of the said Rutherford, Peyton, and Magill, the said 10,000 acres of land, and have obtained a deed for the same.

Your orators further show unto your honour*s*, that a certain Ambrose Walden, a citizen of the commonwealth of Virginia, who, your orators pray may be made a defendant to this bill, having, on the 22d day of May, 1780, made the following entry with the county surveyor, to wit: "Ambrose Walden enters 1333 acres upon a treasury warrant, upon the east side of Jacob Johnson's settlement and pre-emption, on the waters of Johnson's fork, a branch of Licking, to include two cab*b*ins on the north side of said fork, built by Simon Butler, and to run eastwardly for quantity," on the 29th day of November, in the year 1785, caused the same to be surveyed expressly contrary to location, and so as to interfere with your orators' beforementioned claim; and having obtained a patent earlier in date than your orators', refuses to convey such part of the land as is surveyed contrary to location. Your orators further show unto your honour, that a certain Lewis Craig purchased of Simon Kenton, who was the locator of the said 1333 acres of land, and entitled to one-third thereof for his services, his interest therein, and sold the same to Jonathan Rose, William Allen, and Charles Rector; and the said Rose and Allen sold to Abram Shockey and Amz*e*y Chapin; and the said purchasers have been and now are in possession. Your orators further show, that the defendant, Walden, alleging that he had satisfied the claim of the said Kenton as locator, commenced ejectments in your honourable court against the said purchasers, or some of them; and, notwithstanding a division made by the county court, obtained a judgment against them. Your orators show that the said Chapin, and Isaac Shockey, father to Abram Shockey, under whom the said Abram now holds, knowing that the title to the land which they hold of the said Ambrose Walden, is inferior to that of your orators, have at different times applied to your orators, and have made an agreement for the places Abraham Shockey and Amzel

Chapin had purchased, as aforesaid, of Rose and Allen, who purchased of Lewis Craig; and your orators suffered them to become their tenants, because they had always intended to contest the title of the said Walden to that part of his survey which is contrary to entry, of which the said Shockey, Chapin and others are now in possession; and they have hitherto waited to see the event of the suits in your honourable court; but although the said Walden must know that the claim of your orators to that part of the land, is better than his, combining, &c., he threatens to take out execution, &c.; all which actings are contrary to equity, &c. In tender consideration whereof, and forasmuch as your orators are remediless at common law, to the end, therefore, that the said defendant may be compelled, upon his corporal oath, true and perfect answer to make, to all and singular the premises, as fully as if the same were here again repeated and interrogated, and that by a decree of this honourable court, the said defendant may be compelled to convey to your orators as much of his said survey as is made contrary to location; and that until the matter is heard in equity, the said defendant and his agents, may be enjoined and restrained from proceeding on the said judgments obtained in this court against the said Shockey, Chapin, and others; and that your orators may receive such other and further relief, as to equity and good conscience belongs, may it please your honour, the premises considered, to grant to your orators, the United States' writ of sp'd, &c. &c. J. HUGHES, Attorney for Complainants.

Mercer County, to wit:

Personally appeared before me, a justice of the peace for the said county, Thos. Bodley, Robert Pogue, and James Hughes, who, being duly sworn, made oath, that what is contained in this bill, which comes within their own knowledge, is true; and what they have received from the information of others, they believe to be true.

Given under my hand, this 18th day of August, 1800.

JOHN ROCHESTER.

Kentucky District, sct:

An injunction is granted, agreeably to the prayer of this bill, upon condition that the complainants enter into bond with William Murray, security, according to law. Given under my hand, this 5th day of September, 1800. HARRY INNES, *J. K. D.*

To the Clerk of the District Court for the
United States for the Kentucky District.

The following is a copy of the injunction bond herein, to wit:

Know all men by these presents, that we, Thomas Bodley, Robert Pogue, Robert Campbell, James Hughes, and William Murray, of the state of Kentucky, are held and firmly bound unto Ambrose Walden, of the state of ——, in full sum of five hundred dollars, to which payment well and truly to be made to the said Ambrose Walden, his executors, administrators or assigns, we bind ourselves, our heirs, executors, &c., jointly, severally and firmly, by these presents. Sealed with our seals, and dated this 6th day of September, 1800.

The condition of the above obligation is such, that whereas the above bound, Thomas Bodley, Robert Pogue, Robert Campbell and

James Hughes, have obtained an injunction to stay and enjoin all proceedings on five judgments, at the suit of the said Walden's lessee against the following persons, viz: Lewis Craig and Jonathan Rose, Lewis Craig and Amzel Chapin, Lewis Craig and Wm. Allen, Lewis Craig and Charles Rutter, and said Craig and Abraham Shockey.

Now, if the said Thomas Bodley, Robert Pogue, Robert Campbell and James Hughes, shall prosecute the said injunction with effect, or in case the same shall be dissolved, or the complainants' bill dismissed, the said Thomas Bodley, Robert Pogue, Robert Campbell, James Hughes, and William Murray, will pay unto the said Ambrose Walden all costs and damages which may be awarded in consequence of suing out the said injunction; then the above obligation to be void, otherwise, to remain in full force and virtue.

Thos. Bodley,	[Seal.]	Robert Pogue,	[Seal.]
Robert Campbell,	[Seal.]	J. Hughes,	[Seal.]
		William Murray,	[Seal.]

Signed and sealed in the presence of —

And afterwards, to wit, at Rules held in the clerk's office of the court aforesaid, in the month of June, and year 1802, (until which time this cause was continued,) came the defendant, Walden, and filed his answer herein, to wit:

"The answer of Ambrose Walden, a citizen of the commonwealth of Virginia, to a bill of complaint, exhibited to the honourable court of the United States for the Kentucky district, in chancery, by Thomas Bodley, Robert Pogue, Robert Campbell, and James Hughes, citizens of the said state of Kentucky. This defendant, saving and reserving to himself, now and at all times hereafter, all manner of advantage and benefit of exception to the manifold errors, insufficiencies and uncertainties in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised, it is material or necessary for him to answer unto; he answereth and saith, that on the first day of May, in the year 1780, this defendant made, at Wilson's Station, near Harrodsburg, in Kentucky, where the land office was opened for the purpose of drawing lots in order to determine the priority of making locations; and that, on the 22d of May (as this defendant believes), he made his entry pursuant to the lot drawn on the said first day of May, and according to law; the said entry having begun at Jacob Johnson's north-east corner of his pre-emption, as it then stood; as will appear more at large by having reference to the copy of the entry filed in the suit at law between this defendant, as plaintiff, and Amzey Chapin and others, as defendants; which entry this defendant prays may be made a part of this his answer, and is referred to in the manner abovementioned, from a belief that it will be found in the papers in the said suit, this defendant having deposited the same with William Clarke, Esq., then an attorney employed by this defendant to institute an ejectment against the said Chapin, and others, for the recovery of the said land. And this defendant, further answering, expressly charges that the survey was made pursuant to his said entry, and according to law; and not as the complainants have alleged, variant from the said

entry; which untrue allegation of the said complainants will be more fully evidenced by a comparison of the defendant's survey with his said entry, which entry does not appear to have been truly copied by the said complainants in their said bill.

And this defendant, further answering, saith, that Simon Kenton, the person mentioned as the locator for this defendant of the 1333 acres, now in dispute between the said complainants and this defendant, never had any interest whatever in the said 1333 acres, or any part thereof, as this defendant, previous to the location thereof, had compensated the said Simon Kenton, by assigning him, the said Kenton, lands elsewhere; so that the complainants can derive no title from the said Kenton, he, the said Kenton, never having had any therein. And this defendant, protesting against the claim of the said Henry Crutcher and John Tibbs, and of all others mentioned in the said bill, from whom the complainants pretend to derive a title in and to the said lands, under an entry made in the year 1783, as they state, presume that the said complainants, or those from whom they claim, have been led into an error in consequence of the said Jacob Johnston's having moved his original survey subsequent to the time when this defendant had made his entry and survey aforesaid, by the original survey of the said Jacob Johnston, which was made immediately before that of this defendant.

This defendant, further answering, saith, he regrets that he never received any information of the complainants' having obtained an injunction upon his judgments at law until about the 4th of April, in the present year, 1802; otherwise an answer would have been prepared long since.

This defendant denies the combination charged in the said bill, without *that* that there is any other matter or thing material or necessary for this defendant to make answer unto, and not herein well and sufficiently answered unto, confessed or avoided, traversed or denied, is true. All which matters and things this defendant is ready to aver and prove, as this honourable court shall direct and award; and humbly prays that the said injunction may be dissolved, so that this defendant may proceed to obtain the possession of his land, so long and wrongfully withheld; and that this defendant may be dismissed, with his costs and reasonable charges, in this behalf most wrongfully sustained. AMBROSE WALDEN.

Virginia, Corporation of Winchester, to wit:

Ambrose Walden, the defendant above named, personally appeared before Lewis Wolfe, mayor of Winchester aforesaid, and made oath upon the holy evangelists, that the facts herein stated, so far as he hath spoken of his own knowledge, are true; and so far as he hath spoken, on the information of others, he believes them to be true. Given under my hand, and seal of mayoralty, this 28th day of April, 1802. LEWIS WOLFE. [Seal.]

And afterwards, to wit, at Rules held in the clerk's office of the court aforesaid, in the month of July and year aforesaid, came the complainants, by their counsel, and say that the allegations, and that the statements in said answer, so far as they contradict said bill, are untrue.

And it is ruled, that the surveyor of —— county do go on the land in controversy between the parties, on the —— day of —— next, if fair, if not, then on the next fair day, and then and there lay off and survey the same, as either party may direct, having due regard to all deeds and other evidence that may be produced; report all matters of fact specially, and return one fair plat and certificate thereof into the clerk's office of this court, thirty days, at least, before the day of trial; and the marshal, or one of his deputies, is directed to attend the said surveyor, to remove force should any be offered.

And, afterwards, to wit, at Rules held as aforesaid, in the month of November, and year aforesaid,

It is ruled that either party have leave to take depositions generally.

And, afterwards, to wit, at the May term of the seventh circuit court of the United States of America, in and for the Kentucky district, (until which time this cause was continued,)

"It is ordered that this suit be dismissed, the court not having jurisdiction thereof."

Co. Record. *Bodley, &c.* vs. *Walden.*

Pleas, before the honourable Thomas Todd and Harry Innes, judges of the seventh circuit court of the United States of America, in and for the Kentucky district, at Rules held in the clerk's office of the court aforesaid, in the month of April and year 1813.

Be it remembered, that heretofore, to wit, on the 27th day of September, in the year 1811, came Thomas Bodley, &c. into the clerk's office of this court, and filed the following bill against Ambrose Walden, to wit:

"To the honourable the judges of the circuit court of the United States for the seventh circuit, Kentucky district, in chancery sitting: Your orators, Thomas Bodley, James Hughes and Robert Pogue, respectfully show, that, about the 5th day of September, 1800, your orators, with a certain Robert Campbell, filed their bill in chancery against Ambrose Walden, a citizen of the state of Virginia, obtained an injunction and executed bond, agreeable to the order of the judge; a copy of which bill, order and bond, are hereto annexed, marked A, and prayed to be taken as a part of this bill. Your orators further show, that, since the commencement of said suit, the said Robert Campbell has sold and conveyed his interest in the 10,000 acres of land, in the bill mentioned, to your orators.

Your orators further show to your honours, that, at the last term of your honourable court, or at some term prior thereto, by a mistake, or from an impression that by a decision of the supreme court of the United States, this court had not jurisdiction of the cause, under a belief that resident defendants were united in the bill with the defendant, Walden, who was a citizen of Virginia, as they have been informed, the said suit was dismissed, when, in fact, the said Walden was the only defendant; and your orators are advised that this court has competent jurisdiction, and that their case is properly cognizable before your honours. Your orators further charge, that if the said suit is dismissed, it was done under the impression aforesaid, and without their knowledge or consent; that the said Walden, by some means unknown to your orators, has obtained from the clerk's

office of this honourable court, writs of habere facias possessionem on the judgments at law against the tenants in possession, who at the time of commencing the suits in ejectment, held or claimed title under Lewis Craig, but who, the said defendant, Walden, well knew had purchased of, and claimed title under your orators, as set forth in their original bill, herein referred to; and who, before the said judgments were obtained, and ever since, for a lapse of near twelve years, have held peaceable possession of the premises, under the claim of your orators, as aforesaid. But now, so it is, that the said Walden combining, &c. has threatened, under the writs aforesaid, so improperly and illegally obtained, to turn out of possession the persons who purchased from, and claim under your orators, and thereby injure and oppress your orators, and those claiming under them; and inasmuch as your orators are remediless by the strict rules of law, and can only be relieved in equity, to the end, therefore, that the said defendant, Walden, may, upon his corporal oath, true and perfect answer make to the premises, as fully as if the same was herein again repeated and interrogated, may it please your honours to reinstate their former injunction, or grant a new injunction, to enjoin and restrain the said defendant, and all other persons, from further proceedings on the five judgments in ejectment, and the writs of habere facias possessionem, herein mentioned, until the case is heard in equity, and to grant to your orators the commonwealth's writ of subpœna, directed, &c.; and your orators will ever pray, &c.

THOMAS BODLEY, JAMES HUGHES,
J. BLEDSOE, for Compl'ts. ROBERT POGUE.

Fayette county, sct.

Thomas Bodley, for himself, and as attorney in fact for James Hughes, and Robert Pogue, this day made oath before me, a justice of the peace for said county, that what is stated in the foregoing bill is true, to the best of his knowledge and belief.

Given under my hand, this 29th day of September, 1811.

JOHN BRADFORD.

United States of America, seventh circuit, and Kentucky district, to wit:

Let an injunction issue agreeable to the prayer of this bill, upon the complainants' entering into bond in the penalty of $1000, with Achilles Sneed, and John H. Hanna, their security, conditioned according to law.

Given under my hand, this 27th day of September, 1811.

THOMAS TODD, *As. Jus. S. C. U. S.*

To the Clerk of the Circuit Court United States,
In the 7th Circuit, and District of Kentucky.

The following is a copy of the injunction bond, taken herein, to wit:

Know all men by these presents, that we, Thomas Bodley, James Hughes, Robert Pogue, and Achilles Sneed, are held and firmly bound unto Ambrose Walden, in the just and full sum of one thousand dollars, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 27th day of September, 1811.

The condition of the foregoing obligation is such, that whereas the above bound, Thomas Bodley, James Hughes, and Robert Pogue, have obtained an injunction to stay proceedings on five judgments in ejectment, and writs of habere facias possessionem, for 15 acres meadow, 100 arable, and 300 acres woodland, in the county of Mason, obtained by the said Walden, against Lewis Craig and Jonathan Rose, Lewis Craig and Charles Rutter, Lewis Craig and Wm. Allen, Lewis, Craig and Abraham Shockey, and Lewis Craig and Amzel Chapin.

Now if the aforesaid Thomas Bodley, James Hughes and Robert Pogue, shall prosecute the said injunction with effect, or on failure thereof, shall well and truly pay such costs and damages as shall be awarded against them, then the above obligation to be void, else to remain in full force and virtue.

THOMAS BODLEY, [Seal.] ROBERT POGUE, [Seal.]
JAMES HUGHES, [Seal.] ACHILLES SNEED, [Seal.]

Witness—Samuel J. M. Major, as to A. Sneed's Signature.

Signed by Samuel J. M. Major, by virtue of the power hereto annexed.

I, Thomas Bodley, for myself, and as attorney in fact for James Hughes and Robert Pogue, do hereby authorize Mr. — Major, to sign our names to an injunction bond, to be given in the circuit court of the United States, for the 7th circuit Kentucky district, in a suit in chancery – said Thomas Bodley and others, against Ambrose Walden, and to do all legal acts necessary in the premises, hereby ratifying and confirming all and whatsoever said Major may legally do, by virtue of these presents.

Given under our hands and seals, this 27th day of September, 1811.

THOMAS BODLEY, [Seal.]
JAMES HUGHES, [Seal.]
By Thomas Bodley, his Attorney in fact.
ROBERT POGUE, [Seal.]
By Thomas Bodley, his Attorney in fact.

Teste:—J. BLEDSOE.

The following spd. in chancery was issued upon the foregoing bill, to wit:—

[L. S.] The United States of America, to the marshal of the Kentucky district, greeting: You are hereby commanded to summon Ambrose Walden, a citizen of the state of Virginia, to appear before the judges of our seventh circuit court of the United States, in and for the Kentucky district, at the capitol, in Frankfort, on the first Monday in November next, to answer a bill of injunction exhibited against him by Thomas Bodley, James Hughes, and Robert Pogue, citizens of the state of Kentucky; and this he shall in no wise omit, under the penalty of four hundred dollars; and have then there this writ. In testimony whereof, John Marshall, Esq., chief justice of the United States, hath caused the seal of our said court to be hereunto affixed, this 27th day of September, 1811, and of our independence the thirty-sixth.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Memo. This shall enjoin and restrain the within named defendant, and all other persons, from further proceedings on five judg-

ments in ejectment, and the writs of habere facias possessionem obtained by the said defendant against Lewis Craig and Jonathan Rose, Lewis Craig and Charles Rutter, Lewis Craig and William Allen, Lewis Craig and Abraham Shockey, and Lewis Craig and Amzel Chapin, for 15 acres meadow, 100 acres arable, and 300 acres woodland, in the county of Mason, until the case is heard in equity, upon a bill for that purpose filed.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Marshal's return, to wit:—"Executed—

RO. FERGUSON, D. for ROBERT CROCKETT, *M. K. D.*"

And afterwards, to wit, at Rules held in the clerk's office of the court aforesaid, in the month of April, year 1812, (until which time this cause was continued on the rules,) came the defendant, Walden, and filed his answer herein, to wit:

"The answer of Ambrose Walden, a citizen of the commonwealth of Virginia, to a bill of complaint exhibited against him by Thomas Bodley, James Hughes, and Robert Pogue, citizens of the state of Kentucky, in the honourable the circuit court of the United States, for the seventh circuit, Kentucky district. This respondent, saving and reserving to himself, now, and at all times, the right and benefit of excepting to the errors and insufficiencies in the said bill contained, for answer thereto, or to so much thereof as he is advised it is material for him to answer, says that it is true the complainants, and a certain Robert Campbell, filed a bill in chancery against the respondent, and obtained an injunction of the judgments in ejectment as stated by the complainants in their bill; to which bill this respondent filed his answer, a transcript of which answer, and the exhibits therein referred to, are hereto annexed, and made a part of this answer. It is also true, that this respondent obtained from the clerk's office of this honourable court, writs of possession for the land which he had recovered in the said suits at law, which he supposed himself entitled to, after being kept ten or twelve years out of the use and possession of his property, by the said complainants; and although the manner in which he obtained the writs alluded to, may be unknown to the complainants, it is not so to the clerk of this honourable court; and the insinuation made by the complainants in their bill, that the said writs were illegally or improperly obtained, is without grounds, or truth. This respondent knows nothing as to the other statements and allegations made by the complainants in their bill, and therefore requires them to be supported by full proof. This respondent prays this honourable court to dissolve the complainants' injunction, so that this respondent may have the benefit of his judgments at law, and that the complainants' bill may be dismissed, and the defendant recover of the complainants his costs in this behalf expended, &c.

Franklin county, to wit:—This day, Ambrose Walden made oath before me, Martin D. Hardin, a justice of the peace for said county, that what is stated in the foregoing answer in relation to his own transactions, is true; and what relates to the transactions of others, he believes to be true.

Given under my hand, this 9th day of April, 1812.

M. D. HARDIN.

And afterwards, to wit, at the May term of the court aforesaid, and year 1812,

This day, this cause came on to be heard, upon the motion of the said defendants, for a dissolution of the injunction obtained herein; and the court being sufficiently advised of and concerning the same, do adjudge and order that the said injunction be dissolved, and that the said defendant may proceed to have the benefit of his several judgments at common law, which was enjoined herein, and also his costs by him in this behalf expended.

And afterwards, to wit, at Rules held in the clerk's office of the court aforesaid, in the month of April, and year 1813, (until which time this cause was continued,) came the complainants, and dismissed this suit.

EXHIBITS. 3000 *Acres withdrawn. Surveyed* 2000 *Acres of No.* 11,203, *assigned to David Blanchard, August 1st*, 1783. *Jno. Tibbs, &c.*, 20,000 *Acre Entry.*

31st July, 1783. John Tibbs, John Clark, John Sharpe, David Blanchard, and Alexander M'Clain, enters 20,000 acres of land on treasury warrants, to be held by them as tenants in common, according to the following proportions, to wit: John Tibbs 5000 acres, on No. 10,337, 10,338, 10,340, and part of the warrant No. 10,335; John Clark, 1000 acres, on part of warrant No. 10,793; John Sharp, 4000 acres, on part of warrant No. 11,203; David Blanchard, 5000 acres, on warrant No. 11,745, 11,747, and 11,748; and Alexander M'Clain, 5000 acres, on part of warrant No. 10,335, and part of No. 15,193, on M'Connel's fork of Licking; beginning at a large black ash, and a small buckeye, marked thus, J. T., on the side of a Buffaloe road, leading from the Lower Blue Licks, a N. E. course, and about 7 miles N. E. and by east from the said Blue Licks, running thence due north, 1264 poles; thence 2529. 8. poles east; thence south 1264. 9. poles; thence W. 2529. 8. poles, to the beginning.

(A copy.) Teste: JNO. M. FOSTER, *R. L. Office.*
By C. H. FENWICK, *D. R.*

John Taylor's 3000 *Acre Entry.*

May 22d, 1780. John Taylor enters 3000 acres, upon treasury warrants, adjoining John Walden, on the north side of Johnson's fork, on the east and south-east side, running up and down the creek, and north for quantity, to include an improvement made by Jacob Drennin and Simon Butler.

(A copy.) Atteste: JNO. M. FOSTER, *R. L. O.*
By E. A. MACURDY, *D. R.*

Ambrose Walden's 1333 *Acre Entry.*

22d May, 1780. Ambrose Walden enters 1333 acres, upon a treasury warrant, upon the east side of Jacob Johnson's settlement and pre-emption, on the waters of Johnson's fork, a branch of Licking, to include two cabins on the north side of said fork, built by Simon Butler, and to run eastwardly for quantity.

Crutcher & Tibbs' 10,000 *Acre Entry.*

Henry Crutcher and John Tibbs enters 10,000 acres of land on a

treasury warrant, No. 18,747, as tenant in common, beginning at a large black ash, and small buckeye, marked thus, I T, on the side of a buffaloe road leading from the Lower Blue Licks, a N. E. course, and about 7 miles N. E. by E. from the said Blue Licks; a corner of an entry of 20,000 acres, made in the name of John Tibbs, John Clark, John Sharp, David Blanchard, and Alexander M'Clain; running thence with the said Tibbs &c.'s line, due east, 1600 poles; thence S. 1000 poles; thence W. 1600 poles; thence N. 1000 poles; the beginning for quantity. Oct. 17th, 1783.

(A copy.) Teste: ACHILLES SNEED, *D. C. C. A.*

Peter Johnson's 400 *Acre Entry.*

21*st February*, 1780. Peter Johson, heir, &c. enters 400 acres in Kentucky, by virtue of a certificate, &c., lying on the east side of the buffaloe road leading from the Blue Licks to Limestone, nine miles from the Lick, on the upper road.

(A copy.) Teste: JNO. M. FOSTER, *R. L. O.*

Peter Johnson's 1000 *Acre Entry.*

30*th May*, 1783. Peter Johnson, heir at law of Jacob Johnson, deceased, enters 1000 acres of land on a pre-emption warrant, No. 2346, on the waters of Licking creek, about 10 miles from the Blue Licks, adjoining said Johnson's settlement on the south and east, and on the north and west.

(A copy.) Teste: JNO. M. FOSTER, *R. L. O.*

Rutherford & Tibbs' patent for 1000 *acres.*

Beverly Randolph, Esq. Governor of the commonwealth of Virginia, to all to whom these presents shall come, greeting: Know ye, that by virtue and in consideration of a land office treasury warrant, No. 18,747, issued the 14th day of August, 1783, there is granted by the said commonwealth unto Robert Rutherford, assignee of Henry Crutcher, and unto Willoughby Tibbs, heir at law of John Tibbs, deceased, a certain tract or parcel of land containing 10,000 acres, by survey bearing date the 14th day of March, 1784, lying, and being in the county of Fayette, and bounded as followeth, to wit: beginning at a large black ash, and a small buckeye, marked thus, I T, standing on the road leading from the Lower Blue Licks to the mouth of Limestone, about eight miles north-east by east from the said Licks, running thence due east 600 poles, to a small creek; thence continuing the same course 300 poles, to a small creek; thence continuing the same course, 700 poles, in all amount to 1600 poles; and cornering at a buckeye, honey locust, and black walnut; thence due south, at 400 poles, crossed a creek; thence continuing the same course 600 poles and cornering at a black walnut, white ash, and hickory; thence due west, crossing the east fork of Licking, at 800 poles; thence continuing the same course 60 poles, crossed the said fork again; thence continuing the same course seven hundred and forty poles, in all amounting to 1600 poles, and cornering in a large sink hole, on two red oaks, and a honey locust; thence due north at 480 poles, crossed the main branch of the east fork of Licking; continuing the same course at 60 poles, crossed the said fork again; continuing the same course 60 poles, crossed the said fork the

third time, amounting to one thousand eight hundred poles, to the beginning, with its appurtenances: to have and to hold the said tract or parcel of land, with its appurtenances, to the said Robert Rutherford and Willoughly Tibbs, and their heirs for ever. In witness whereof, the said Beverly Randolph, Esq. governor of the commonwealth of Virginia, hath hereunto set his hand, and caused the lesser seal of the said commonwealth to be affixed, at Richmond, on the 26th day of August, in the year of our Lord one thousand seven hundred and ninety, and of the commonwealth the fifteenth.

BEVERLY RANDOLPH, [Seal.]

Robert Rutherford and Willoughby Tibbs are entitled to the within mentioned tract of land. JOHN HAWRA, *R. L. O.*

Patent to A. Walden of 1333 *Acres.*

Patrick Henry, Esq., governor of the commonwealth of Virginia, to all to whom these presents shall come, greeting: Know ye, that by virtue and in consideration of part of a land office treasury warrant, No. 2693, issued the 18th day of February, 1780, there is granted by the said commonwealth, unto Ambrose Walden, a certain tract or parcel of land, containing 1333 acres, by survey, bearing date the 29th day of November, 1785, lying and being in the county of Fayette, on the waters of Johnson's fork of Licking, adjoining Jacob Johnson's pre-emption on the east side, and bounded as followeth, to wit: Beginning on his north-east corner a buckeye and hoop ash trees; thence south sixty-eight degrees, east 450 poles, to two red oaks and a honey locust; thence south twenty-two degrees, west 473¾ poles, to an ash, spanish oak, mulberry and buckeye trees, standing on the bank of a small branch; thence N. 68°. W. 450 poles, to a hickory, red oak and white oak, on the south-east of Johnson's pre-emption; and with a line of the same, N. 22°. E. 473¾ poles, to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said Ambrose Walden and his heirs, forever. In witness whereof, the said Patrick Henry, Esq., governor of the commonwealth of Virginia, hath hereunto set his hand, and caused the lesser seal of the said commonwealth to be affixed at Richmond, on the 21st day of November, A. D. 1786, and of the commonwealth the eleventh.

P. HENRY, [Seal.]

Ambrose Walden is entitled to the within mentioned tract of land.

JOHN HARVIE, R. L. O.

Beverly Randolph, Esq., governor of the commonwealth of Virginia, to all to whom these presents shall come, greeting: Know ye, that by virtue and in consideration of a land office treasury warrant, No. 18747, issued the 14th day of August, 1783, there is granted by the said commonwealth, unto Robert Rutherford, assignee of Henry Crutcher, and unto Willoughly Tibbs, heir at law to John Tibbs, deceased, a certain tract or parcel of land, containing 10,000 acres, by survey, date– the 14th day of March, 1784, lying and being in the county of Fayette, and bounded as followeth, to wit: Beginning at a large black ash and small buckeye, marked thus, I T, standing on the road leading from the Lower Blue Licks to the mouth of Limestone, about 8 miles N. E. by east from the said Licks; running

thence due east 600 poles, to a small creek; thence continuing the same course, 300 poles, to a small creek; thence continuing the same course, 700 poles, amounting in all to 1600 poles, and cornering at a buckeye, honey locust and black walnut; thence due south at 400 poles crossed a creek; thence continuing the same course 600 poles, and cornering at a black walnut, white ash and hickory; thence due west, crossing the east fork of Licking at 800 poles; continuing the same course 60 poles, crossed the said fork again; thence continuing the same course 740 poles, in all amounting to 1600 poles, and cornering, in a large sink hole, on two red oaks and honey locust; thence due north at 480 poles, crossed the main branch of the east fork of Licking; continuing the same course, at 60 poles crossed the said fork the third time, amounting to 1800 poles, to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said Robert Rutherford and Willoughly Tibbs, and their heirs, forever. In witness whereof, the said Beverly Randolph, Esq., governor of the commonwealth of Virginia, hath hereunto set his hand, and caused the lesser seal of the said commonwealth to be affixed at Richmond, on the 26th day of August, in the year of our Lord one thousand seven hundred and ninety, and of the commonwealth the fifteenth.

BEVERLY RANDOLPH.

(A copy.) Teste: JNO. M. FOSTER, *R. L. O.*
By E. A. MACURDY, *D. R.*

Reed and Fox's Patent.

Isaac Shelby, Esq., governor of the commonwealth of Kentucky, to all to whom these presents shall come, greeting: Know ye, that by virtue and in consideration of part of a land office pre-emption warrant, No. 2346, there is granted by the said commonwealth unto John Reed and Arthur Fox, assignees of Peter Johnson, heir at law to Jacob Johnson, deceased, a certain tract or parcel of land, containing 250 acres, by survey bearing date the 10th day of April, 1789, lying and being in the county of Bourbon, adjoining their settlement on the west corner, and bounded as followeth, to wit: Beginning at two honey locusts and pea locust, the west corner of said settlement; thence, S. 39°. E. 126½ poles, to a large sugar tree, near a branch; thence, S. 51°. W. 110 poles, to two hackberries and elm; thence, N. 39°. W. 236½ poles, to a white ash and buckeye; thence, N. 51. E. 236½ poles, to two small hickories, on a ridge; thence, S. 39°. E. 110 poles, to a stake in said settlement line; thence, with said line, S. 51°. W. 126½ poles, to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said John Reed and Arthur Fox, and their heirs for ever. In testimony whereof, the said Isaac Shelby, Esq., governor of the commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of the said commonwealth to be affixed, at Lexington, on the 20th day of February, A. D. 1793, and of the commonwealth the first.

By the governor, ISAAC SHELBY, [Seal.]
JAMES BROWN, *Secretary.*

(A copy.) Teste: JNO. M. FOSTER, *R. L. O.*
By C. H. FENWICK, *D. R.*

Thomas Bodley's Patent for 16,000 *Acres.*

James Garrard, Esq., governor of the commonwealth of Kentucky, to all to whom these presents shall come, greeting: Know ye, that by virtue and in consideration of John Tibbs, 5000 acres, on warrants Nos. 10,337, 10,338, 10,340, and part of 10,335; John Clarke, 1000 acres, on warrant No. 10,793; John Sharpe, 4000 acres, on warrant No. 11,203; David Blanchard, 5000 acres, on warrants Nos. 11,745, 11,747 and 11,748; and Alexander M'Clain, 5000 acres, on part of warrant No. 10,335, and 15,193; there is granted by the said commonwealth unto Thomas Bodley, assignee of David Baldwin, who was assignee of Willoughly Tibbs, David Blanchard, Alexander M'Clain, and John Sharpe, a certain tract or parcel of land, containing 16,000 acres, by survey bearing date the 8th day of June, 1796, lying and being in Mason county, and bounded as followeth, to wit: Beginning at a large ash and small buckeye stump, on which stood the trees called for in the entry, which was marked J. T., by the side of the road leading from the Lower Blue Licks to Limestone; running thence, N. 1264 poles, crossing a large creek at 380 poles, to a white ash and honey locust; thence, E. 1540 poles, crossing Lee's creek, at 110 poles, to a stake in the line of Thomas Marshall's 10,500 acre survey; thence, with said line, S. 22½, W. 438 poles, to his corner, a honey locust and buckeye; thence, S. 86°. E. 935 poles, crossing Mill creek at 538 poles, to a stake; thence, S. 785 poles, to a stake; thence, W. 2324 poles, to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Thomas Bodley and his heirs, for ever. In witness whereof, the said James Garrard, Esq., governor of the commonwealth of *Virginia*, hath hereunto set his hand, and caused the *lesser* seal of the said commonwealth to be affixed, at Frankfort, on the 21st day of April, in the year of our Lord one thousand seven hundred and ninety-eight, and of the commonwealth the sixth.

By the governor, JAMES GARRARD, [Seal.]
HARRY TOULMIN, *Secretary.*
(A copy.) Teste: JNO. M. FOSTER, *R. L. O.*
By C. H. FENWICK, *D. R.*

Reed and Fox's Patent for 250 *Acres.*

Isaac Shelby, Esq., governor of the commonwealth of Kentucky, to all to whom these presents shall come, greeting: Know ye, that by virtue and in consideration of part of a land office pre-emption warrant, No. 2346, there is granted, by the said commonwealth, unto John Reed and Arthur Fox, assignees of Peter Johnson, heir at law to Jacob Johnson, deceased, a certain tract or parcel of land, containing 250 acres, by survey, bearing date the 10th day of April, 1789, lying and being in the county of Bourbon, adjoining their settlement on the south, and bounded as followeth, to wit: Beginning at a honey locust and black ash, in the forks of a branch; thence, N. 51°, E. 126½ poles, to a buckeye and white ash; thence, N. 39°, E. 110 poles, to a black hickory; thence, S. 51°, W. 236½ poles, to two white oaks; thence, N. 39°, E. 236½ poles, to two white oaks; thence, N. 39°, E. 236½ poles, to two hackberries and elm; thence,

N. 51°, E. 110 poles, to a large sugar tree, in said settlement line; thence, with said settlement line, S. 39°, E. 126¼ poles, to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said John Reed and Arthur Fox, and *his* heirs, for ever. In testimony whereof, the said Isaac Shelby, Esq., governor of the commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of the said commonwealth to be affixed, at Lexington, on the 20th day of February, A. D. 1793, and of the commonwealth the first.

By the governor, ISAAC SHELBY, [Seal.]
JAMES BROWN, *Secretary.*
(A copy.) Test: JNO. M. FOSTER, R. L. O.
By C. H. FENWICK, D. R.

Reed and Fox's Patent for 400 *Acres.*

Isaac Shelby, Esq., governor of the commonwealth of Kentucky, to all to whom these presents shall come, greeting: Know ye, that by virtue and in consideration of a certificate for settlement right, agreeably to an act of the Virginia assembly, passed in the year 1779, there is granted, by the said commonwealth, unto John Reed and Arthur Fox, assignees of Peter Johnson, heir at law to Jacob Johnson, deceased, a certain tract or parcel of land, containing 400 acres, by survey, bearing date the 9th day of April, 1789, lying and being in the county of Bourbon; on the upper Buffalo road, leading from the Lower Blue Licks to Limestone, nine miles from said Licks, on the east side of said road, and bounded as followeth, to wit: Beginning at two honey locusts and a pea locust, on the east side of said road; thence, N. 51°, E. 253 poles, to a cherry tree, black walnut and white hickory, on the east side of said road; thence, S. 29°, E. 253 poles, to a willow oak, hackberry and honey locust; thence, S. 51°, W. 253 poles, to a black ash and honey locust, in the forks of a branch; thence, N. 39°, W. 253 poles, to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said John Reed and Arthur Fox, and their heirs, forever. In testimony whereof, the said Isaac Shelby, Esq., governor of the commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of the said commonwealth to be affixed, at Lexington, on the 20th day of February, A. D. 1793; and of the commonwealth the first.

By the governor, ISAAC SHELBY, [Seal.]
JAMES BROWN, *Secretary.*
(A copy.) Test: JNO. M. FOSTER, R. L. O.
By C. H. FENWICK, D. R.

Reed and Fox's Patent for 250 *Acres.*

Isaac Shelby, Esq., governor of the commonwealth of Kentucky, to all to whom these presents shall come, greeting: Know ye, that by virtue and in consideration of part of a land office pre-emption warrant, No. 2346, there is granted, by the said commonwealth, unto John Reed and Arthur Fox, assignees of Peter Johnson, heir at law to Jacob Johnson, deceased, a certain tract or parcel of land, containing 250 acres, by survey, bearing date the 10th day of April, 1789,

lying and being in the county of Bourbon, adjoining their settlement upon the north, and bounded as followeth, to wit: Beginning at a black walnut, cherry and white hickory, corner to said settlement; thence, S. 51°, W. 126½ poles, to a stake; thence, N. 39°, W. 110 poles, to two small hickories, on a ridge; thence, N. 51°, E. 236½ poles, to a buckeye and small hickory; thence, S. 39°, E. 236½ poles, to two small white ashes; thence, S. 51°, W. 110 poles, to a white hickory, near a small branch, in a line of said settlement; thence, N. 39°, W. 126½ poles, with said line, to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said John Reed and Arthur Fox and *his* heirs forever. In testimony whereof, the said Isaac Shelby, Esq., governor of the commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of the said commonwealth to be affixed, at Lexington, on the 20th day of February, A. D. 1793, and of the commonwealth the first.

By the governor. ISAAC SHELBY, [Seal.]
JAMES BROWN, *Secretary.*
(A copy.) Test: JNO. M. FOSTER, R. L. O.
By C. H. FENWICK, D. R.

Reed and Fox's Patent for 250 acres.

Isaac Shelby, Esq. governor of the commonwealth of Kentucky, to all to whom these presents shall come, greeting: Know ye, that by virtue and in consideration of part of a land office pre-emption warrant, No. 2346, there is granted by the said commonwealth unto John Reed and Arthur Fox, assignees of Peter Johnson, heir at law to Jacob Johnson, deceased, a certain tract or parcel of land, containing 250 acres, by survey, bearing date the 10th day of April, 1789, lying and being in the county of Bourbon, and bounded as followeth, to wit: Beginning at a willow, oak, hackberry, and honey locust, the west corner of their settlement; thence, N. 39°. W. 126½ poles, to a white hickory; thence, N. 51°. E. 110 poles, to 2 small white ashes; thence, S. 39°. E. 236½ poles, to a buckeye, and white oak; thence, S. 51°. E. 236½ poles, crossing a large branch, to a hickory; thence, N. 39°. W. 110 poles, to a buckeye, and white ash, in said settlement line; thence, with said line, to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said John Reed and Arthur Fox, and their heirs forever.

In testimony whereof, the said Isaac Shelby, Esq. governor of the commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of the said commonwealth to be affixed, at Lexington, on the 20th day of February, A. D. 1793, and of the commonwealth the first.

By the governor. ISAAC SHELBY, [Seal.]
JAMES BROWN, *Secretary.*
(A Copy.) Test: JNO. M. FOSTER, *R. L. O.*
By C. H. FENWICK, *D. R.*

DEED—*Crawford, Com'r to Bodley and Pogue.*

This indenture, made this 6th day of September, A. D. 1825, between James Crawford, commissioner, for and on behalf of Ambrose

Walden, and the unknown heirs of John Walden, deceased, of the one part, and Thomas Bodley and Robert Pogue, of the other part: Whereas, by a decree of the Fleming circuit court, at their March term, 1825, in a suit in chancery, wherein Thomas Bodley and Robert Pogue are complainants, and Ambrose Walden, the unknown heirs of John Walden, deceased, John Thrailkield, Ann Thrailkield, and the heirs of Jeremiah Proctor, deceased, are defendants, it is, amongst other things, decreed and ordered, that the defendant, Ambrose Walden, do, on or before the first day of June next, release and convey to the complainants the whole of the tract of land, containing, by survey, 1333⅓ acres, (except 150 acres sold and conveyed by said Ambrose Walden, and which is now in the possession of Dale Carter, who was heretofore a defendant in this suit, but as to whom the bill has been dismissed;) and in case the said Ambrose Walden shall fail or refuse to make said conveyance, then James Crawford is hereby appointed commissioner, to release and convey the said tract of land, except, as aforesaid, *to* "to the commissioners;" and the said James Crawford is also appointed commissioner, to convey for and on behalf of the unknown heirs of John Walden, deceased, the whole of the tract of 1666⅔ acres of land, according to the bounds of the survey, except so much thereof as is in the possession of the defendants, John Thrailkield, Ann Thrailkield, aad the heirs of Jeremiah Proctor, deceased. And whereas the said Ambrose Walden, and the unknown heirs of John Walden, deceased, have failed to convey to the complainants the before described two tracts of land agreeably to said decree,

Now, this indenture witnesseth, that the said James Crawford, commissioner as aforesaid, for and in behalf of the said Ambrose Walden, and the unknown heirs of John Walden, deceased, for and in consideration of the premises and in order to carry this decree into effect, hath granted, bargained, sold, released and conveyed, and by these presents doth grant, bargain, sell, release and convey, unto the said Thomas Bodley and Robert Pogue, (agreeably to their respective interests, that is, to Bodley two-thirds, and to Pogue one-third,) all those two tracts or parcels of land, situate on the waters of Johnson's fork, in the counties of Fleming and Mason, the one containing 1333⅓ acres, entered and surveyed in the name of Ambrose Walden; the other, situate as aforesaid, containing 1666⅔ acres, entered and surveyed as aforesaid in the name of John Walden; subject, however, to the exceptions and reservations hereinbefore mentioned. The said tract of 1333⅓ acres, was patented to the said Ambrose Walden, on the 1st day of November, 1786, and is bounded as follows, to wit: Beginning at a buckeye and hoop ash tree; thence south 68°, E. 450 poles, to two red oaks and honey locust; thence S. 22°, W. 473¾ poles, to an ash, Spanish oak, mulberry and buckeye trees, standing on the bank of a small branch; thence N. 68°, W. 450 poles, to a hickory, red oak, and white oak, the S. E. corner of Johnson's preemption; thence with a line of the same, north 22°, E. 473¾ poles, to the first station: and the said tract of 1666⅔ acres, was patented to John Walden, on the 1st day of November, 1786, and is bounded as follows, to wit: Beginning at the S. W. corner of A. Walden's survey, at a hickory, red oak and white oak; thence 68°, E. 450 poles,

to an ash, Spanish oak, buckeye and mulberry, the south-east corner of said A. Walden; and with a line of the same, N. 22, E. 164 poles, to two sugar trees and two white oaks, in said Walden's line; thence S. 68°, E. 284 poles, to a locust, white oak and coffee trees; thence S. 22°, W. 464 poles, to two small Spanish oaks and cherry; thence N. 68°, W. 734 poles, to a hickory in a *bend* of Johnson's fork; thence N. 22°, E. 300 poles, to the beginning; together with all and singular the premises and appurtenances thereunto belonging, or in any wise appertaining; to have and to hold the said two tracts or parcels of land and premises, subject to the exceptions and reservations aforesaid, unto the said Thomas Bodley and Robert Pogue, their heirs or assigns, for ever, agreeably to their several interests; that is, two-thirds to said Bodley, and one-third to said Pogue. And the said James Crawford, commissioner as aforesaid, doth hereby convey to the said Bodley and Pogue, as aforesaid, all the right, title, claim, and interest of the said Ambrose Walden, and the unknown heirs of John Walden, deceased, in and to the before described two tracts of land, subject to the exception and reservations aforesaid, as fully as he is authorized as commissioner, aforesaid, by the said decree and by law to do. In testimony whereof, the said James Crawford, commissioner, as aforesaid, hath hereunto set his hand and seal, the day and date first above written.

JAS. CRAWFORD, [Seal.]

September Term, 1825.

Fleming Circuit, sct.—I, Leakin D. Stockton, clerk of the court for the circuit aforesaid, certify, that this deed from James Crawford, commissioner therein named, to Thomas Bodley and Robert Pogue, was, at a court held for the said circuit, on the 6th day of September, in the year 1825, produced in open court, acknowledged by the said commissioner, and ordered to be recorded, which is done.

L. D. STOCKTON.

September 7th, 1825.

Fleming County, sct.—I, George M. Stockton, deputy for Joshua Stockton, clerk of the court for the county aforesaid, do certify, that this deed, from James Crawford, commissioner, as therein named, to Thomas Bodley and Robert Pogue, was this day produced before me, and acknowledged by said Crawford to be his act and deed; and the same is, with the official certificate, duly recorded in my said office.

G. M. STOCKTON, D. C.

DEED—*Bodley to Duncan.*

This indenture, made this third day of Oct., A. D. 1822, between Thomas Bodley and Catharine H., his wife, of the county of Fayette, and commonwealth of Kentucky, of the one part, and David Duncan, of the county of Mason, and commonwealth aforesaid, of the other part, witnesseth: That the said Thomas Bodley, for and in consideration of the sum of $360, current money of Kentucky, to him in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, and by these presents doth grant, bargain and sell, and confirm unto the said David Duncan, his heirs and assigns, all that tract or parcel of land situate and being in the county of Mason, on the waters of Johnson's fork of Licking, containing

178 acres, 27 poles, and bounded as follows, to wit: Beginning at a stone near the corner of said Duncan's orchard; thence S. 38¼°. E. 138 poles, to a stake corner to John Peed; thence with Peed's line S. 52°. W. 252 poles, *to a white oak*, to a white oak and stone in William Deye's lane; thence north 6°. W. 159 poles, to a stone; thence N. 50°. E. 168 poles, to the beginning; being part of 200 acres of land which was originally purchased by said Duncan, of Arthur Fox, about the —— day of —— out of Jacob Johnson's settlement and pre-emption, and whereon the said David Duncan now lives; the balance of the 200 acres, that is, thirty-six acres thereof having been given up by said Duncan to said Thomas Bodley in a compromise about said land, and is this day conveyed by the said Bodley to the heirs and representatives of Benjamin Clark, deceased, agreeably to an agreement between the parties, bearing date the 4th day of June, 1816; by which the said Bodley is bound to convey to said Duncan all his right, title, claim and interest under Tibbs's company's 20,000 acres, and the several other claims which he holds, and to warrant and defend against the claim of Ambrose Walden, together with all and singular the premises thereunto belonging, or in any wise appertaining; to have and to hold the land hereby conveyed, with the appurtenances, unto the said David Duncan, his heirs and assigns, forever; and the said Thomas Bodley, for himself, his heirs, executors and administrators, the aforesaid tract of land and premises unto the said David Duncan, his heirs or assigns, against the claim or claims of all and every person or persons whatsoever claiming by, through, or under him, and against the claim of Ambrose Walden, and those claiming under him, doth and will forever defend by these presents. In witness whereof, the said Thomas Bodley, and Catharine H., his wife, have hereunto set their hands and seals, the day and date first above written.

THOS. BODLEY, [Seal.]

Acknowledged in presence of — CATHARINE H. BODLEY, [Seal.]

The words "two" and "stone" twice inserted by Thomas Bodley.

Oct. 3d, 1822.

Fayette County, to wit:—This indenture was this day produced to me, the clerk of the court for the county aforesaid, and acknowledged by Thomas Bodley, and Catharine H. Bodley, his wife, parties thereto, to be their act and deed; she, the said Catharine, being by me privily examined, separately and apart from her said husband, as the law directs, freely and voluntarily relinquished her right of dower in and to the premises conveyed by this indenture, which is hereby certified to the clerk of Mason county court, for record.

Attest: J. C. RODES, Clerk.

State of Kentucky, Mason County, sct.—I, Marshall Key, clerk of the county court of said county, certify that this deed of conveyance from Thomas Bodley, and Catharine H., his wife, to David Duncan, was this day produced in my office, under the certificate of the clerk of Fayette county court, and the same, together with the certificate thereon endorsed, are duly recorded in my said office. Given under my hand, this 22d day of January, 1823.

MARSHALL KEY.

Hughes's deed to Bodley.

This indenture made this 11th day of October, A. D. 1815, between James Hughes and Mary his wife, of Franklin County, Kentucky, of the one part, and Thomas Bodley of Lexington, Fayette county, Kentucky, of the other part, witnesseth, That the said James Hughes, for and in consideration of about the sum of $27,000 received by him as set forth in an article of agreement between the parties, bearing date the 17th day of July, 1815, and in order to carry said agreement into effect, hath granted, bargained and sold, and by these presents, doth grant, bargain, sell, and convey, unto the said Thomas Bodley, his heirs or assigns for ever, all the right, title, claim and interest of him the said James Hughes, his heirs, &c., in and to the following tracts of land heretofore held in manner hereinafter mentioned, to wit, so much of one undivided moiety as has not been conveyed by him, by virtue of any sales made by either of them in and to the following tracts of land, to wit, 16,000 acres, surveyed on part of an entry of 20,000 acres, made in the names of John Tebbs & Co. on the 31st of July, 1783, lying on the waters of Johnson's fork and the north fork of Licking in Mason and Fleming counties, patented to said Bodley the day of and one half thereof conveyed by him to said Hughes: also 3000 acres entered and surveyed in the name of David Blanchard, adjoining the above mentioned 20,000 acre tract at the S. E. corner, patented to said Bodley and Hughes the 14th day of February, 1799: also one other tract of 10,000 acres, entered and surveyed in the name of Robert Clarke, near the upper Blue Licks, patented to said Bodley and Hughes: also one other tract of 6052 acres in Mason county, adjoining Shannon's settlement and pre-emption, entered in the name of John Marshall, patented to Thomas Marshall, and with certain reservations contained in the deed, conveyed by Lewis Marshall to said Bodley and Hughes; all which tracts have been heretofore jointly held in partnership between said Bodley and Hughes: also, one undivided third part of 10,000 acres of land, entered in the names of John Tebbs and John Crutcher, patented to Willoughby Tebbs and Robert Rutherford, and by sundry conveyances transferred to the said Bodley, Hughes and Robert Pogue: also, all his, said Hughes's, interest in and to the purchase made by said Bodley, Hughes and Pogue, from John Taylor, Caroline county, Virginia, of 3000 acres of land on Johnson's fork of Licking, which said last mentioned tracts have been jointly held in partnership between the said Bodley, Hughes and Pogue, the said several tracts hereinbefore mentioned, being particularly bounded and described in the several original surveys and patents which are hereby referred to; and the said James Hughes, for himself, his heirs, &c. by these presents, doth give up, relinquish, transfer and convey, to the said Thomas Bodley, his heirs, executors, administrators, or assigns, all right, title, claim or benefit to be derived from any, and all of the contracts heretofore made by them or any person for them respect-

ing the said lands or any part thereof together with the appurtenances thereunto belonging or appertaining, to have and to hold the land hereby conveyed with the appurtenances unto the said Thomas Bodley, his heirs or assigns forever; and the said James Hughes, for himself, his heirs, &c. before described interest in said tracts of land against the claim or claims of all persons claiming by, through or under him, but against no other claim whatever, unto the said Thomas Bodley, his heirs or assigns, doth and will warrant and defend by these presents.

But it is understood and is the true intent and meaning of this indenture, that in case the whole or any part of said land should be lost or taken by any other claim, the said Hughes, his heirs, &c. are not to be liable to refund any part of the consideration or be subject to any costs or damages as the said Hughes only sells his right without any recourse or liability in any event whatever. In testimony whereof the said James Hughes and Mary his wife have hereunto set their hands and seals the day and date first above written.

Executed in presence of } JAMES HUGHES, [SEAL.]
MARY HUGHES, [SEAL.]

Memo. It is further understood that if any partnership land sold by the said Hughes previous to the 17th day of July, 1815, is unconveyed, the said Hughes does not warrant against such claimant, but a title is to be made by the said Bodley. The word "dollars" first page between the 5th and 6th lines interlined before signing. ALEX. H. RENNICK, D. C.

Franklin County, sct.

I, Willis A. Lee, Clerk of the County Court for the county aforesaid, do certify that this deed from James Hughes and Mary Hughes his wife, to Thomas Bodley was produced to me on the 11th day of Oct. 1815, and was acknowledged by the said James and Mary to be their act and deed for the purposes therein mentioned, and she the said Mary Hughes being by me examined separate and apart from her husband as the law directs, did freely and voluntarily relinquish her right of dower in and to the premises without the threats or persuasions of her said husband, and was willing the same might be recorded as such, whereupon the same is certified to the Clerk of the County Court for the county of Mason. In testimony whereof I have hereunto set my hand as Clerk the date above written.

WILLIS A. LEE, *Clerk.*

State of Kentucky, Mason County, sct.

I, Marshall Key, Clerk of the County Court of said county, do certify that this deed of conveyance from James Hughes and Mary his wife to Thomas Bodley was this day produced in my office with the acknowledgment before the Clerk of the County Court of Franklin county, and the same is duly recorded. Given under my hand this 15th day of November, 1815.

MARSHALL KEY.

Fleming County Clerk's Office, November 7th, 1818.

I, James Crawford, deputy Clerk of the court for said county, certify that this deed from James Hughes and wife, to Thomas Bodley, was this day produced in my office, and by virtue of the certificate of the clerk of Franklin County Court, is duly recorded.

JAS. CRAWFORD.

R. Campbell's deed to Bodley et al.

This Indenture made this 6th day of August, A. D. 1804, between Robert Campbell and Rebecca his wife, of Mason county, State of Kentucky, of the one part, and Thomas Bodley, James Hughes, and Robert Pogue, of the other part. Whereas, the said Robert Campbell and the parties of the second part, in the year 1798, became joint purchasers from Peyton & Magill, of Winchester, and Robert Rutherford, of Berkley county, Virginia, of a survey of 400 acres of land, on Johnson's Fork of Licking, in Mason and Fleming counties, Kentucky, entered in the names of John Tibbs and Henry Crutcher, patented to Robert Rutherford, assignee of Henry Crutcher and Willoughby Tibbs, heir at law of John Tibbs, dec'd.; and the same was conveyed to the said Thomas Bodley, James Hughes, Robert Pogue and Robert Campbell, by deed dated the day of duly recorded in the clerk's office of the Washington District Court; and whereas, the said Robert Campbell had a claim to a pre-emption of 1000 acres of land, entered in the name of William Hays assignee of David *Binrey*, and patented to the said Campbell, the greater part of which is included within the said 10,000 acres survey, and by an article of agreement between the said parties, dated the 16th day of March, 1801, it is among other things agreed and stipulated that the said Campbell shall release and convey to the said Bodley, Hughes and Pogue, all the right, title, claim and interest of him the said Campbell, of, in and to, all the said 10,000 acres of land, except to so much thereof as is covered by and included in the patent boundaries of the said Campbell's pre-emption; and that the said Bodley, Hughes and Pogue, shall release and convey to the said Campbell all their right, title, claim and interest under their said claim of 10,000 acres to all that part of the said Campbell's pre-emption, which is included within the said 10,000 thousand acre survey, all which will appear by a reference to the said agreement, in which the contract between the parties is fully stated. Now this Indenture witnesseth, that the said Robert Campbell and Rebecca his wife, for and in consideration of the pre-emption above recited, and for the further consideration – five shillings current money to them paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released and confirmed, and by these presents do grant, bargain, sell and release and convey unto the said Thomas Bodley, James Hughes and Robert Pogue, their heirs or assigns forever, all the right, title, claim and interest of the said Robert Campbell under the purchase and deed aforesaid, in and to the before described ten thousand acres of land, agreeably to the boundaries and description contained in the patent and deed

aforesaid, except as to so much thereof as covers and is included within the patent boundaries of the said Campbell's pre-emption as aforesaid, together with all and singular the premises and appurtenances thereunto belonging or in any wise appertaining. To have and to hold the land and premises hereby conveyed unto the said Bodley, Hughes and Pogue, their heirs or assigns forever, unto the said Robert Campbell and Rebecca his wife, for themselves, their heirs, &c. the said land and premises unto the said Bodley, Hughes and Pogue, their heirs or assigns against the claim or claims of the said Robert Campbell and Rebecca his wife, their heirs and all persons claiming or to claim, by, through or under them, do and will warrant and defend by these presents. But it is agreed by the parties, and is the true intent and meaning of this Indenture, that if the whole or any part of said land should be lost or taken by any better claim, the said Robert Campbell is not bound to refund, nor is he liable or subject to any costs or damages whatsoever, as he only transfers and relinquishes his right to the said land without any kind of recourse.

In testimony whereof the said Robert Campbell, and Rebecca, his wife, have hereunto set their hands and seals the day and date first above written.

Signed and acknowledged in presence of } ROBERT CAMPBELL, [SEAL.] REBECCA CAMPBELL, [SEAL.]

Mason County, sct.

I, Francis Taylor, Clerk of the Court of the Circuit aforesaid, do certify that this indenture from Robert Campbell and Rebecca, his wife, to Thomas Bodley, James Hughes and Robert Pogue, was this day produced before me, acknowledged by the said Robert Campbell, a party thereto, and a copy thereof is duly recorded in my office.

Given under my hand the 6th day of August 1804.

FR. TAYLOR.

This indenture made this 15th day of February, A. D. 1799, between Robert Rutherford, of Berkley County, John Peyton and Charles Magill, of Frederick County, in the state of Virginia, of the one part, and Thomas Bodley, James Hughes, Robert Campbell and Robert Pogue, of the State of Kentucky, of the other part, witnesseth, that the said Robert Rutherford, John Peyton and Robert Magill, for and in consideration of one thousand and fifty pounds current money *of Kentucky* of Kentucky, to them paid, the receipt whereof the – do hereby acknowledge, do by these presents grant bargain, sell, alien and confirm unto the said Thomas Bodley, James Hughes, Robert Campbell and Robert Pogue, their heirs or assigns, forever, all that tract or parcel of land, lying and being in the counties of Mason and Fleming, in the state of Kentucky, on the waters of Johnson's Fork of Licking and bounded as follows, to wit, beginning at a stake where there formerly stood a large black ash and small buckeye trees, marked I T, on the road leading from the lower Blue Licks to the mouth of Limestone, about eight miles N. E. by E. from the said Licks, running thence due

east 600 poles to a small creek continuing the same course to another small creek continuing the same course in all 1600 poles to a buckeye honey locust and black walnut, thence due south at 400 poles crossed a creek continuing the same course in all 1000 poles to a black walnut, white ash and hickory, thence due west crossing the east fork of Licking at 800 poles, continuing the same course at 60 poles crossed the said fork again, continuing the same course in all 1600 poles to two red oaks and a honey locust in a sink hole, thence due north at 480 poles crossed the main branch of the east fork of Licking, continued the same course at 60 poles crossed the said fork again crossed the said fork the third time at 60 poles, continued the same course in all 1000 poles to the beginning, containing 10,000 acres, by survey made in the names of Henry Crutcher and Willoughby Tibbs, heir at law to John Tibbs, deceased, on the 4*th* day of March 1784; and patented to Robert Rutherford, assignee of Henry Crutcher and Willoughby Tibbs, heir at law of John Tibbs, deceased, one half of the said tract was conveyed by the said Willoughby Tibbs to John Peyton by deed recorded in the clerk's office of the Washington District Court, and one half of the said moiety transferred by the said Peyton to Charles Magill, by agreement, together with all and singular the improvements and appurtenances thereunto belonging or in any wise appertaining; to have and to hold the land hereby conveyed with all and singular the premises unto the said Thomas Bodley, James Hughes, Robert Campbell and Robert Pogue, their heirs or assigns forever, and the said Robert Rutherford, John Peyton and Charles Magill, for themselves, their heirs, executors or administrators, the aforesaid tract of land with the appurtenances against the claim or claims of them or either of them and their heirs, and against all claims of dower or other incumbrance which may arise under them or their heirs, unto the said Thomas Bodley, James Hughes, Robert Campbell and Robert Pogue, their heirs or assigns, do and will warrant and forever defend by these presents, but it is understood and expressly agreed between the parties, that in case the whole or any part of the said land should be lost or taken, by elder or better claims, the said Rutherford, Peyton and Magill, are not to refund or be accountable for any part of the purchase money, as they only sell the right of themselves and their heirs without any recourse.

In witness whereof the said Robert Rutherford, John Peyton and Charles Magill, by Buckner Thruston, their attorney, in fact duly authorized by power of attorney, bearing date the 5th of October, 1798, and recorded in the clerk's office of the Lexington District Court, have hereunto set their hands and affixed their seals the date first above written.

Executed in the presence of
JAMES BROWN,
LEWIS MARSHALL,
JOHN ARTHUR,
MACGREGOR.

ROBERT RUTHERFORD, [SEAL.]
JOHN PEYTON, [SEAL.]
CHARLES MAGILL. [SEAL.]

State of Kentucky, Washington District, sct.

I John Chambers deputy Clerk of the Washington District Court, do certify that this Indenture from Robert Rutherford, John Peyton and Charles Magile by Buckner Thruston, their Attorney in fact to Thomas Bodley, James Hughes, Robert Campbell and Robert Pogue, was on the 20th day of February in the year 1799, produced before me, proven by the oath of Lewis Marshall, a subscribing witness thereto, and was the 26th day of August in the year 1799, aforesaid, proven by the oath of James Brown, another subscribing witness thereto; and was this day proven by the affirmation of MacGregor another subscribing witness thereto; and is truly recorded in the office of the said Court, given under my hand this 13th day of September 1800.

JOHN CHAMBERS.

This Indenture made the 23d day of May A. D. 1795, between Willoughby Tibbs, of the town of Dumfries, in the County of Prince William, in the Commonwealth of Virginia, and Betsey his wife of the one part, and John Peyton of Winchester in the County of Frederick, and Commonwealth aforesaid of the other part witnesseth that for and in consideration of the sum of £700, current money of Virginia, to the said Willoughby Tibbs, in hand paid by the said John Peyton, at, or before the sealing and delivery of these presents the receipt whereof he doeth hereby acknowledge and for other good causes and considerations, him hereunto moving, they, the said Willoughby Tibbs, and Betsey his wife have granted, bargained and sold, and by these presents do grant bargain, and sell, unto the said John Peyton and his heirs; all his, the said Willoughby Tibbs, undivided moiety, or half part of two certain tracts or parcels of land, situate on the waters of Licking, in the State of Kentucky. One of which tracts contain 3000 acres, and the other 10,000 acres, as particularly described in two patents granted for the same by Beverly Randolph Esq. then Governor of Virginia, to Robert Rutherford, assignee of Henry Crut-her, and to the said Willoughby Tibbs, heir at law of John Tibbs, dec'd, which patents bear date respectively, the 26th day of August 1790, reference thereunto being had, may more fully appear together with all tenements, hereditaments and appurtenances to the said undivided moiety, of the two tracts of land above mentioned: belonging or in anywise appertaining to have, and to hold, the said undivided moiety of the two tracts, or parcels of land above mentioned, and thereby intended to be bargained and sold free and clear of all incumbrances whatsoever, except the taxes now due thereupon unto the said John Peyton, his heirs and assigns forever; to the only proper use and behoof of him the said John Peyton, his heirs and assigns forever, and the said Willoughby Tibbs, for himself and his heirs, the land hereby intended to be bargained and sold unto the said John Peyton, his heirs and assigns, against them the said Willoughby Tibbs, and Betsey, his wife and their heirs, and all and every other person or persons claiming, by, from or under him or them, shall warrant and forever defend. In witness

whereof the said Willoughby Tibbs, and Betsey his wife have hereunto set their hands and seals, the day *and year* and year first before written.

Sealed and delivered in presence of } Wy. Tibbs [SEAL] Betsey Tibbs [SEAL]

Prince William County, to wit:

Personally appeared William Tibbs, the person named in the foregoing indenture as the grantor thereof, before us, two of the Justices of the Peace in and for the county aforesaid, and signed, sealed, and acknowledged the same indenture to be his act – deed for the purposes therein mentioned. Given under our hands, this 23d day of May, 1795.

Alexander Sithgow.
Wm. Barnes.

Commonwealth of Virginia, Prince William County, sct.

****
SEAL.
******* I John Williams, Clerk of the County aforesaid, do hereby certify that Alexander Sithgow and Wm. Barnes, Gentlemen, who granted the above certificates, are Justices of the Peace in and for the County aforesaid, and that due faith and credit ought to be given to the said certificate as well in Courts of Justice as thereout. In testimony whereof, I have hereunto set my hand, and affixed the seal of the said County, this 23d day of May, 1795, and in the 19th year of the Commonwealth.

John Williams.

State of Kentucky, Washington District, sct.

I Francis Taylor, Clerk of the Washington District Court, (being authorized by law to receive and admit to record in my office, deeds and other writings,) do certify that this indenture from Wy. Tibbs and Betsey his wife, to John Peyton, was on the 12th day of August, 1796, produced before me, and is together with the certificates thereunto annexed, duly recorded in my office.

Francis Taylor, *C. W. D. C.*
Marshall Key, *C. M. C. C.*

A copy attest:

Rose's deed to Rose.

This indenture made this 2d day of July, A. D. 1827, between Jonathan Rose, of the County of Fleming, and Commonwealth of Kentucky, of the one part, and Jonathan H. Rose, of the County of Fleming, and Commonwealth aforesaid, of the other part, witnesseth, that the said Jonathan Rose, for and in consideration of the sum of $700, current money of Kentucky, to him in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, and by these presents do– grant, bargain, sell, and confirm unto the said Jonathan H. Rose, his heirs and assigns, all that tract or parcel of land, situate and being in the County of Fleming, on the waters of the Flat Fork of Johnson, containing 130¼ acres, and bounded as follows, to wit: beginning at a white ash and buck-

eye, standing on the north side of a branch, S. W. corner of the land of Fyfle's, K.'s, thence N. 67½, W. 158 poles to a buckeye, two sugar trees and – black oak, thence N. 21, E. 44 poles to a black ash and hickory on the bank of the creek, thence N. 57½, E. 31 8/10 poles to a stone on the south bank of the Flat Fork, thence N. 38, E. 85 2/10 poles to a hickory, (both the last named corners being corners of Pogue's mill tract,) thence S. 62½, E. 110 poles to two blue ashes and a sugar tree, thence S. 21, W. 158 poles to the beginning; being the same land conveyed by Bodley & Pogue to said Jonathan Rose, together with all and singular the personal property in the possession of and now owned by said Jonathan Rose, together with all and singular the premises thereunto belonging or in anywise appertaining, to have and to hold the land hereby conveyed, and the appurtenances, unto the said Jonathan H. Rose, his heirs and assigns forever; and the said Jonathan Rose, for himself, his heirs, executors, and administrators, the aforesaid tract of land and premises unto the said Jonathan H. Rose, his heirs or assigns, against the claim or claims of all and every person or persons whatsoever claiming through or under him, but against no others whatever, does and will forever defend, by these presents. In witness whereof, the said Jonathan Rose has hereunto set his hand and seal the day and date first above written.

Acknowledged in presence of } JONATHAN ROSE, [SEAL.]
ELIZABETH × ROSE, [SEAL.]

Fleming County, sct. July 2d, 1837.

As deputy Clerk of the Fleming County Court, I certify that this deed from Jonathan Rose to Jonathan H. Rose, was this day produced before me, and acknowledged by the said Jonathan Rose to be his deed, and the same is duly recorded.

JAMES CRAWFORD, *D. C.*

Fleming County, sct. October 18, 1828.

As deputy Clerk of the Fleming County Court, I certify that this deed from Jonathan Rose and Elizabeth his wife to Jonathan H. Rose, was this day produced before me, and the said Elizabeth being examined by me privily and apart from her said husband, declared that she did freely and willingly seal and deliver *said* said writing, and wished not to retract it, and acknowledged said writing again shewn and explained to her, to be her deed, and consenteth that the same may be recorded, which is done.

G. M. STOCKTON.

Thomas Bodley, et al. deed to D. Clarke, et. al.

This indenture made the 25th day of May, A. D. 1826, between Thomas Bodley and Catharine H. his wife, of the county of Fayette, and Commonwealth of Kentucky, on the one part, and Daniel Clarke, Thomas Clarke, Susan Sumrall, wife of Joseph K. Sumrall, Judeth, Susan E. Mary, Thomas C., Charles, Daniel, and Walter Lacey, children of Walter Lacey and Elizabeth his wife, late Elizabeth Clarke, dec'd., Mary Hester McMullin, a child of Andrew F. McMullin and Mary his wife, late Mary Clarke, dec'd.,

and Virginia Clarke, heirs of Benjamin Clarke, dec'd. of the County of Mason, and Commonwealth aforesaid, of the other part, witnesseth, that the said Thomas Bodley, for and in consideration of the sum of $1465, current money of Kentucky, to him in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, sell, and confirm unto the said heirs of Benjamin Clarke, dec'd., their heirs or assigns, all that tract or parcel of land, situate and being in the County of Mason, on the waters of Johnson's fork of Licking, containing 650 acres, in two different tracts, and bounded as follows, to wit: the first beginning at a blue ash corner to Richard Tennant, on Johnson's old line, thence with said line S. 40°, E. 123 poles to a white oak and hackberry, corner to 50 acres sold to Gen'l. Robert Pogue out of Johnson's pre-emption, thence with his line S. 50°, W. 80 poles to a stake, thence S. 40°, E. 100 poles to a white oak and hickory in Johnson's line, and corner to Pogue, thence S. 50°, W. 182 poles to a stake, corner to Peed, thence N. 40°, W. 242 poles to a stone, corner to David Duncan, thence N. 50°, E. 242 poles to the beginning. The second tract beginning at the above mentioned stone corner to Duncan, thence with his line S. 50°, W. 258 poles to a stake in Johnson's line, thence with the same S. 40°, W. 242 poles to a stake where one of Johnson's original corners stood, thence N. 50°, E. 258 poles to a large poplar and hickory, one of Longley's corners, thence S. 40°, E. 242 poles to the beginning. The two tracts containing 650 acres, be it more or less, part of Jacob Johnson's settlement and pre-emption. Also another tract of 64 acres, and bounded as follows, to wit: beginning at a buckeye corner to Nathaniel Hixon, thence with his line S. 40°, E. 109½ poles to a blue ash, corner to Richard Tenant, thence with his line N. 17½, E. 52 poles to a box elder, another of Tenant's corners, thence S. 45°, E. 17½ poles to a stone, another of Tenant's corners, thence S. 83°, E. 60 poles to a large hackberry in Allen's line, thence with said line N. 40, W. 154 poles to a buckeye corner to Thomas Wilson, thence S. 51°, W. 84 poles to the beginning, which said Bodley claimed by virtue of Tibbs & Co. 20,000 acre entry, and John Marshall's 6050 acre entry, and which he sold to said Clarke by agreement, dated 1st August, 1811, together with all and singular the premises thereunto belonging or in anywise appertaining, to have and to hold the land hereby conveyed, with the appurtenances, unto the heirs of Benjamin Clarke, dec'd., *their* heirs and assigns, forever. And the said Thomas Bodley, for himself, his heirs, executors, and administrators, the aforesaid tract of land and premises unto the said heirs of Benjamin Clarke, dec'd., their heirs or assigns, against the claim or claims of all and every person and persons whatsoever, agreeably to an article of agreement between the parties, doth and will forever defend by these presents. In witness whereof, the said Thomas Bodley and Catharine H. his wife, have hereunto set their hands and seals the day and date first above written.

Acknowledged in presence of } THOMAS BODLEY, [SEAL.]
CATHARINE H. BODLEY, [SEAL.]

State of Kentucky, Mason County, sct.

I Marshall Key, Clerk of the County Court for said County, certify that this deed of conveyance from Thomas Bodley and Catharine his wife, to the heirs of Benjamin Clarke, dec'd. was this day produced in my office, and acknowledgd before me by the said Thomas Bodley, to be his act and deed, and the said deed is hereby recorded in my said office. Given under my hand this 25th day of May, 1826. MARSHAL KEY.

Read's H's. and Rep's. to Benjamin Clarke.

This Indenture, made this 1st day of August, A. D. 1815, between John Read, Anthony Read, James Read, and Sally Ann Foster Ewing, daughter and heir of Nancy Ewing, dec'd. late Nancy Read, by Wm. Y. C. Ewing, her guardian duly appointed by law, heirs and legal representatives of John Read, dec'd. late of the County of Nelson, and Commonwealth of Kentucky, on the one part, and Benjamin Clarke, of the Commonwealth aforesaid of the other part witnesseth, that the said heirs and representatives of John Read, dec'd. for and in consideration of the sum of $2000 current money of Kentucky, to them in hand paid, the receipt whereof is hereby acknowledged, have granted bargained and sold, and by these presents do grant, bargain, sell and confirm, unto the said Benjamin Clarke, his heirs and assigns all that tract or parcel of land, situate and being in the county of Mason, and on the waters of Johnson's fork of Licking, containing 700 acres, and bounded as follows to wit, being one equeal half or undivided moiety of a settlement and pre-emption of 1400 acres lying on the Limestone road, nine miles from the lower Blue Licks, entered in the name of Peter Johnson, heir at law of Jacob Johnson dec'd. and patented to John Read and Arthur Fox, agreeable to the description and boundaries contained in said patents as by reference thereto will fully appear together with all and singular, the premises thereunto belonging, or in any wise appertaining to have and to hold the land hereby conveyed with the appurtenances unto the said Benjamin Clarke, his heirs and assigns forever, and the said heirs and representatives of John Read dec'd. for themselves, their heirs, executors and administrators, the aforesaid tract of land and premises unto the said Benjamin Clarke, his heirs or assigns, against the claim or claims of all and every person or persons whatsoever, do and will forever defend by these presents. In witness whereof the said heirs and representatives of John Read dec'd. have hereunto set their hands and seals, the day and date first above written.

Acknowledged in presence of
WALTER LACY,
DANIEL CLARK,
WM. ROUTT,
THOMAS CLARKE,

JOHN READ, [SEAL.]
By Anthony F. Read, his Atto. in fact.
ANTHONY F. READ, [SEAL.]
JAMES G. READ, [SEAL.]
By Anthony F. Read, Atty. in fact.
SALLY ANN FOSTER EWING, [SEAL.]
By Wm. Y. C. Ewing, her Guardian.

State of Kentucky, Mason County, sct.

I Marshal Key, Clerk of the County Court of said County, do certify that this deed of conveyance from John Read, Anthony

Read, James G. Read, and Sally Ann Foster Ewing to Benjamin Clarke was produced in my office and proved according to law by the oath of Daniel Clarke and Thomas Clarke witnesses thereto, and the same is duly recorded. Given under my hand this 14th day of August, 1815. MARSHALL KEY.

This Indenture made this 3d day of October, A. D. 1822, between Thomas Bodley and Catharine H. his wife, of the county of Fayette, and Commonwealth of Kentucky, of the one part and Daniel Clarke, Thomas Clarke, Walter Lacey, Judith Lacey, Susan Lacey, Mary Lacey, Thomas Lacey, Edwin Lacey, Walter Lacey, jr. and Daniel Lacey, children of Elizabeth Lacey dec'd. late Elizabeth Clark, Andrew McMullin, and Mary Hester McMullin, daughter of Mary McMullin dec'd. formerly Mary Clark, Joseph K. Summall, and Susan his wife, late Susan Clark, and Virginia Clark, heirs legal representatives of Benjamin Clark, of the county of Mason, and Commonwealth aforesaid of the other part witnesseth, that the said Thomas Bodley, for and in consideration of the sum of $1605 current money of Kentucky, to him in hand paid, the receipt whereof is hereby acknowledged hath granted, bargained and sold, and by these presents doth grant, bargain, sell and confirm, unto the said heirs and representatives of Benjamin Clarke, their heirs and assigns, all that tract or parcel of land situate and being in the county of Mason, on the waters of Johnson's fork of Licking, containing 107 acres, and bounded as follows to wit: Beginning at two Buckeyes, in Jacob Johnson's settlement and pre-emption line, a corner of Nathaniel Hickson's, thence S. 40° W. 71 poles with Clark's line to a honey locust stump hickory, and white oak thence with another line of Clark's, N. 41, W. 241 poles to three hickories, thence N. 40° E. 72 poles with another of Clark's lines, to two hickories and a sugar tree, thence with a line of Nathaniel Hickson's to the beginning, being the same land given up by the heirs of Arthur Fox dec'd. in a compromise with said Bodley in the year 1818, known by the name of Longley's place, is part of Jacob Johnson's settlement and pre-emption, and is also part of John Tibb's & Co's. 20,000 acre entry patented to said Bodley, the said 107 acres having been sold by the said Bodley, to said Clarke on the day of 1816, together with all and singular the premises thereunto belonging, or in any wise appertaining to have and to hold the land hereby conveyed with the appurtenances unto the said heirs and representatives of Benjamin Clark dec'd. their heirs and assigns forever, and the said Thomas Bodley, for himself, his heirs, executors and administrators, the aforesaid tract of land, and premises, unto the said heirs and representatives of Benjamin Clarke dec'd. their heirs or assigns, against the claim or claims of all and every person or persons whatsoever, doth and will forever defend by these presents. In witness whereof, the said Thomas Bodley, and Catharine H. his wife, have hereunto set their hands and seals, the day and date first above written.

Acknowledged in presence of } THOS. BODLEY, [SEAL.]
CATHARINE H. BODLEY, [SEAL.]

Fayette County, to wit: *Oct. 3d*, 1822.

This Indenture was this day produced to me the Clerk of the

Court for the county aforesaid, and acknowledged by Thomas Bodley and Catharine H. Bodley his wife, parties thereto, to be their act and deed. She the said Catharine being by me privily examined separately and apart from her said husband, as the law directs, freely and voluntarily relinquished her right of dower in and to the premises conveyed by this Indenture, which is hereby certified to the Clerk of Mason County Court for record.

Att.—J. C. Rodes, Cl'k.

Deposition of Gibson Hamrick.

The deposition of Gibson Hamrick of lawful age and sound mind, he being upwd of 64 years of age, given at the house of Samul Baldwens in the county of Mason, to be read in evidence in a suit in chancery, now depending and undetermined in the Federal Court for the District of Kentucky, at Frankfort, where Ambrose Walden is complainant, and Thomas Bodley and others are defendants, this 22d day of March, 1832, being first sworn, deposeth and says, that he moved on the land of Ambrose Walden in the year 1805, on the land claimed by Walden and near where there stood a cabin, and that in conversation one day with Jonathan Rose, then living on Ambrose Walden- land, Rose then observed that if Walden should recover the land then sued for by Walden that there stood the cabins of Walden, on the north side of *Creak*, that is the flat fork of *Jonson* near to a mill first built by Shockey and since *ond* by me, and when I first *seteld* on the land it was generally *none* as Ambrose Walden's improvements.

Question by the Complainant.

Was this improvement of Walden generally *none* by early setlers in the neighborhood?

Answer.

They were: and I further state that I heard Walden point out the same place that Jonathan Rose had pointed out for his improvement, and this deponent further sayes not.

G. Hamrick.

Mason County, sct.

The foregoing deposition of Gibson Hambrick, was this day taken, subscribed and sworn to by the said Gibson Hambrick before the undersigned, a Justice of the Peace for said county, at the time and place, and for the purpose stated in the caption thereof. Given under my hand this 29th day of March, 1832.

Perry Jefferson, J. P.

Deposition of Nathaniel Hickson.

March 29th, 1832.—This deposition of Nathaniel Hickson, of lawful age and sound mind, taken at the house of Walter Lacey in Mason county, to be read in evidence in a suit in Chancery in the Federal Court sitting in Frankfort, for the 7*th* District of Kentucky United States Court, *where* Ambrose Walden is complainant, and Thomas *Bobbe* and others are defendants, being firs sworn, deposeth and sayeth, that having been called on by Edward Blackburn, agent for Ambrose Walden, last fall to shew and depose to the spot where a cabbin stood, called Walden's cabbin inside of Walden's survey; I then shews the place where the said cabbin stood on the

north or northwest side of the flat fork of Johnson's fork of Licken, as may be seen by reference to my former deposition and the plat as laid down by the county surveyor.

Question by the Complainant.

Did you or did you not know of another cabbin on the land of Walden, near the cabbin refered to in your other deposition, on the same side of said creek.

Answer.

I did not know of another cabbin of my own knowledge, but from the information of others there was another cabbin called Walden's cabbin, between two and four hundred yards below where the one stood spoken of in my former deposition, on the same side of the creak and inside of Walden's survey.

Question by same.

Were not those cabbins called and known as Walden's cabbins at the time you first became acquainted with this part of the country?

Answer.

I knew the one and *herd* the other called Walden's cabbins, as early as 1795, and have resided in the neighborhood ever since, and have never *herd* them called any body else's cabbins or by any other name; and further I was informed by Simon Kenton, that he, Kenton, built said cabbins for Walden, and further this deponent saith not.

NATHANIEL HIXON.

Kentucky, Mason County, sct.

The above deposition of Nathaniel Hixson, was this day taken, subscribed and sworn to before the undersigned, one of the Justices of the Peace for said county, at the time and place and for the purpose as set forth in the caption. Given under my hand this 29th of March, 1832.

JAMES ARTUS.

Deposition of Nathaniel Hixson.

The deposition of Nathaniel Hixson, taken to be read in evidence in the suit in chancery, depending in the circuit court of the United States for the District of Kentucky, wherein Thomas Bodley and others are complainants, and Ambrose Walden and others are defendants, on the 11th day of November, 1831, at the house of Major Walter Lacey, in the county of Mason and state of Kentucky, who being duly charged and sworn to depose the whole truth, deposeth and saith:

Question by the Defendants.

Was not the cabin that stood at the place this day shown by you to the surveyor of Mason county, and which he has represented on the plat and report of survey in this suit, by the letter A, known and commonly called when spoken of, Ambrose Walden's cabin, and within his survey of 1333 acres, represented on the plat by figures 5, 6, 7, 8?

Answer by Deponent.

There was a cabin which stood at the place shewn by this deponent to the surveyor of Mason county this day, which when spoken of was commonly called Walden's cabin, and was within his survey

of 1333 acres; the place of the cabin is represented on the plat, shewn this deponent by the surveyor, and to be returned in this suit, by the letter A.

Question 2d, by same.

At what period did you first become acquainted with the cabin above spoken of?

Answer by the Deponent.

I am not certain whether it was in the year 1794 or 1795, but in one of those years.

Question 3d, by same.

From the appearance of the cabin when you become first acquainted with it, how long do you suppose it had been built previous to that period?

Answer, by Deponent.

I would suppose that from its appearance it was built from ten to fifteen years, before I saw it.

Question 4th, by same.

Was there not another cabin in said Walden's survey of 1333 acres, claimed by, or called Walden's Cabin?

Answer by Deponent.

I heard persons speak of another Cabin as Walden's Cabin, inside of his survey, in and about the time of my first acquaintance with the one first mentioned.

Question 5th, by same.

Are you acquainted with Jacob Johnson's survey of 400 acres, and of his survey of 1000 acres, called his settlement survey, if so, state when, and how far they are from the lower Blue Licks?

Answer by Deponent.

I am acquainted with both, the 400 and 1000 acre surveys, in the name of Jacob Johnson, adjoining each other. I first knew those surveys, or rather claims in the fall of the year 1788, they were not surveyed until the spring 1789, and they were well known by persons in their neighbourhood as Johnson's claims, their distance from the lower Blue Licks was nine miles, a fact which this deponent the better knows from having once at the request of the complainant Bodley, measured the distance, and their locality is on what was then called the upper Buffaloe tract, leading from said Licks to Limestone.

Question 6th, by same.

How long have you resided in the neighbourhood of those surveys?

Answer by Deponent.

I have lived on the settlement survey, in the name of Jacob Johnson, ever since the month of January 1792, the 400 acre survey lies in the centre of the settlement survey.

And further this deponent says nothing.

NATHANIEL HIXSON.

Kentucky, Mason County, sct.

The above deposition of Nathaniel Hixson, was taken subscribed and sworn to, before the undersigned, one of the Justices of the peace, in and for said County, at the time and place, and for the

purpose as set forth in the caption thereof. Given under my hand this 11th November 1831.

JAMES ARTHER.

Deposition of Nathaniel Hixson.

The deposition of Nathaniel Hixson, taken at the house of Major Lac–y, in the County of Mason, on the 9th day of Oct'r 1832. In pursuance *to notice* in the suits in Chancery, depending in the circuit Court of the United States, for the District of Kentucky, wherein Thomas Bodley, and others are complainants. And Ambrose Walden is defendannt, who being duly charged, examined, cautioned and sworn to depose the whole truth, doth depose, and say to the following interrogatory by the defendant. State if you have or not, on to-day showed to surveyor Athelston Owens, the nine miles point on the Buffaloe road, from the Blue Lick, to the mouth of Limestone. If you know said road, if you have or not, on to-day *or* not shown to said surveyor two places where once stood two improvements, called and known as Walden's improvements, have you or not been long acquainted with this part of the country, and the objects aforesaid. State all you know on these subjects.

The deponent answereth, that he settled where he now lives on the upper Buffaloe road, from the Blue Licks to the mouth of Limestone, in the year 1792, on the claim of Peter John, and has been well acquainted in the neighbourhood ever since, and about the year 1796, he saw a Cabin standing on a point on the North-West side of the flat fork of Johnson's fork, which he was informed was Walden's Cabin, and about the same time, was informed that a Cabin had stood on a point just below said Cabin; also called Walden– Cabbin, the position of this Cabbin, or place where I was informed that it stood; I on to-day shewed to surveyor Owens, as well as of the Cabin I saw standing. This deponent (cant state from whom he first got the information), that said Cabins were designed for Walden, but thinks the first satisfactory information he got on the subject, was from Gen. Simon Kenton, that from his earliest acquaintance the Buffaloe road, on which he shewed the 9 mile point, was called the upper road, or Buffaloe *trace*, from the Blue Licks to the mouth of Limestone. The *trace* that lead near Ross's old station, was called the middle trace; that 10 or 12 years since he was called upon to show the upper Buffaloe road or trace, leading from the Blue Lick to Limestone, to Col. Duval Payne, a surveyor and others, and was present when the same was run and measured by said surveyor, and the nine mile run out at the point where this deponent shewed, the surveyor on to-day, this deponent was shewed a place that was formerly called the nine mile point by Arthur Fox, dec'd, who said that he had measured it from the Blue Licks to that place.

By same.

Did you or not ever hear said Cabbins called by the neighbors or others by any other name or as any other persons but Walden? Answereth that he never did, that the cabbin he saw appeared ancient and was considerably decayed, it was made about ten or

twelve feet square, and made of logs, he supposed that logs of the kind would decay as much as they appeared decayed in fifteen years.

Question by Major Lac-y, for Complainants.

State if the information you got from General Kenton, was when on the ground where the cabbins stood?

Answer.

We were not on the ground.

By same.

Was there not a number of other cabins along the flatt fork?

Answer.

If there were, I know nothing of them, there might be, but if there was I have never heard of them, at least I have no recollection of ever hearing of them.

Question by Defendant's Counsel.

How long do you suppose the stream called the Flat Fork is from head to the mouth?

Answer.

About two miles and a half on a straight line. And further deponent saith not.

NATHANIEL HIXSON.

The deposition of Joseph Duncan taken in same suit and at the same time and place to be read in evidence in same suits.

State, Mr. Duncan, if you can, any knowledge you possess of the cabbins spoken of by Mr. Hixon, and whatever you know relative to their existence and whatever else you know material in this case? Answereth that he hath no knowledge of them whatever and does not know that he can detail anything material to the controversy, and further the deponent saith not.

JOSEPH DUNCAN.

Deposition of Simon Kenton.

The deposition of General Simon Kenton, taken at the same time and place in the same suits. Who deposeth and saith, that in the year 1776, about the month of May or June, that he, assisted by Jacob *Drennan* and Samuel *Arrowsmith*, built the two cabbins called for in Ambrose Walden's entry, that after he made Ambrose Walden's said entry of 1333 acres, and called for said cabbins in the location as built by Simon Kenton, that at the time he made said location he knew of no other improvements on the *creek* on which the improvements stood, that they stood near what is now called the Flatt Fork of Johnson and on the north west side of the Flatt Fork, that said cabbins were about ten or twelve feet square and built of logs about as high as his head, that they put ribs on them, but whether they covered them or not with bark he does not recollect, that in the year 1784 he shewed said cabins to two deputies of Col. Marshall, to wit, Simon Morgan and James Wright, expecting to get them to survey but failed, that in the year 1785 he employed William Henry, another deputy, and shewed him the cabbins and pillotted the surveys. This deponent has this day seen the flatt fork, and knows that it was the creek on which he built the cabins and when he was making the survey it was his intention

and that of the surveyor to include the cabbins, nearly in the centre, between the east and west lines, that the ground being cleared and the country so altered he is not able to state the precise situations of the improvements, that he was with the surveyor to-day, when Mr. Hixon shewed the places as those where the improvements stood, that he feels satisfied as to one of the places but not as to the other, as he thought that they were a half a mile or more apart, and one of them higher up the creek than the one shewn by Hixon, but can't say as to the distance they were apart, but he is confident that they were both in the bounds of the survey, and on the same side of the creek. Said deponent saith that from the year 1775 he was well acquainted with Limestone creek and its mouth, and with the Blue licks and the three principal Buffaloe roads that ledd from the blue licks or lick, northwardly, that after passing the *bat*tle ground the main Buffaloe road branched into three princi*pal* forks, the one passed or crossed Clarke's run, near where it emptied into the north fork and from thence went over the ridge to the head of Lee's creek to the Ohio, this was called the lower Buffaloe road or trace, and the other road passed near the former residence of General Desha and Ross's Station, crossing the north fork to Durrett lick, and then united with the upper road on Warren's branch, where they became one road and led to the mouth of Limestone. This *was* was called the middle Buffaloe road or trace, the other fork or road was called the upper road, and crossed Johnson–fork above Clarke's mill to Mayslick, crossing the north fork then through where Washington stands to Warren's branch, where it united with the middle trace or road and lead to Limestone creek, at its mouth. That these roads were generally and notoriously known to *travelers* and others acquainted in the part of the country from the year 1775, by the names of the upper, lower and middle Buffaloe roads, leading from the Blue lick or licks, that the Blue licks and limestone were likewise well known in 1775. That there are two salt springs at what is called the lower Licks. That on the north side of Licking river (from whence these roads lead) there *was is* but one salt spring or Lick, the other being on the south side of Licking river. These springs are between three and four hundred *hundred* apart, that he is well acquainted with what is called the upper Blue lick and has been so from the year 1775, that said salt spring or lick lies on the south side of the Licking river, that there is no spring or *lick* near that on the north side of Licking river, and he feels confident that was no Buffaloe road that lead from the upper Blue – to limstone. That he knew of some traces leading out to the *feeding grounds* and one lead to mill creek, and down mill creek. That explorers marked a path from mill creek, thence towards the waters of Limestone creek, but there was no Buffaloe road from Limestone to mill creek, that he never hea–d – any road leading in any direction from the upper Blue Lick called the upper Buffaloe road, and never hea–d – any road except the one before described called the upper Buffaloe road leading from the Blue licks to Limestone. That he never knew or heard of but one Buffaloe road leading from the upper Blue lick to

the Ohio, that passed by *Stogden* Spring, and over to cabbin creek, and down that to the Ohio. That the place he shewed the surveyor to-day was, at the time the deponent made Walden's entry, called nine miles from the Blue lick. The deponent further states that at the time he made the entry of Ambrose Walden of 1333 acres, he, the deponent, was called and well known by the name of Simon *Buttler*, and was so called and known by that name until sometime thereafter. The deponent further saith, that, from the time he first knew the upper and lower Blue licks, that each of them was sometimes called in the singular and plural, that is, the upper Blue lick was sometimes called the upper Blue licks, and the lower Blue licks was sometimes called the lower Blue lick.

Question by Defendant.

Suppose a person were at Limestone, or Kenton's station or *Hicksonston's* station were to say that he had been at the Blue lick or Blue licks, at which lick would he be understood to mean he had been at?

Answer.

I would at once say at the lower Blue licks, the reason why he would be so understood is the greater notoriety of the lower Blue licks, they being on the leading way from the mouth of Limestone into the stations settled in Kentucky, the upper Blue lick was out of the range of settlements at an early day, and of course was not so much spoken of.

By Major Lac-y for the Complainants.

Were there not other improvements in the neighborhood of Ambrose Walden's improvements besides his, Walden's?

Answer.

There were many in different places and directions from Walden, but I know of none within Walden's bounds.

By Defendant's Counsel.

Have you any recollection of ever seeing on the stream now called the flatt fork, any improvement except Walden's?

Answer.

I have not. And further deponent saith not.

SIMON KENTON.

State of Kentucky, Mason County, to wit:

I certify that on the day and at the place stated in the caption of the deposition of Nath'l. Hixon, the deponent appeared. The deponents, the said Nath'l. Hixon, Joseph Duncan, and Simon Kenton, and being by me severally charged and sworn as stated in said caption, did give and depose to and subscribe severally, and each for himself in my presents, and before me, these depositions as the same appear and succeed each other, all which is certified this 9th day of October, 1832, under cover and seal.

LEVI VAUCAMP.

Deposition of Simon Kenton.

The deposition of General Simon Kenton, taken at the house of Job Garwood, in Zanesfield, in the County of Logan, in the State of Ohio, to be read in evidence in the suits in Chancery, depending in the Circuit Courts of the United States for the District of Ken-

tucky, wherein Thomas Bodley, et al. are complainants, and Ambrose Walden, et al., are defendants, on the 28th day of Oct. 1831, who being duly charged and sworn to depose the whole truth, deposeth and saith that in the summer of 1776, with Jacob Drennen, Samuel *Arrowsmith*, and others, men who were exploring the country for making improvements, built two cabins a small distance east of the Buffaloe road leading from the lower Blue licks, in Kentucky, to Limestone, on the north side of Johnson's fork of Licking river, about nine miles from the said licks; that he afterwards, on the 22d day of May, 1780, entered in the name of Ambrose Walden upon a treasury warrant 1333 acres of land, which included the said two cabins; that he, in November, 1785, proceeded with Wm. Henry, a surveyor, to survey the said entry, and made the survey according to said entry, which included the said two cabins, then standing; that some five or six years since he was called upon by E. M. Blackburn, agent for said Walden, to show the corners of the said survey to the surveyor of Mason County, Kentucky, that he proceeded on with said surveyor and said Blackburn, that he shew- them where the beginning corner stood, but it was cut down, that the surveyor commenced running from the said place, and run round the survey agreeable to the calls, and according to his best recollection; we found all of the corners except the beginning one, and that the survey agreed with the calls to a great degree of accuracy, that he frequently from the time of surveying the said entry, in passing the road from the said lower Blue licks to his station about 200 poles north of what is now the north end of Washington, in Mason County, Kentucky, observed the beginning corner of said survey by the relation it bore to a large sugar tree standing on the side of the road, and frequently in passing along said road with company, pointed out said corner to them as said Walden's beginning corner; and further saith not.

SIMON KENTON.

State of Ohio, Logan County, ss.

The aforesaid deposition of General Simon Kenton was taken, subscribed and sworn to before me, one of the justices of the peace in and for the said county, and at the time and place aforesaid, which place is estimated to be 180 miles from Frankfort, State of Kentucky. Given under my hand and seal at Zanes*field* in the County of Logan, State of Ohio, on the 28th day of October, 1831.

ALEX. LONG, J. P. [SEAL.]

Deposition of Levi Vaucamp.

The deposition of Levi Vaucamp before James Artus, the undersigned, one of the justices of the peace in and for the Commonwealth of Kentucky and County of Mason, being, by virtue of my commission, one of the Judges of the County Court in and for the county aforesaid, duly commissioned, sworn, and acting as such, taken on this 25th day of October in the year 1834, at the dwelling-house of James Artus *in* in the county aforesaid, to be read as evidence in a certain – depending in the Court of the United States in and for the Seventh Circuit and Kentucky District holden in Frankfort, wherein Thos. Bodley's heirs and Robert Pogue's

heirs are complainants and Ambrose Walden et al., are defendants in chancery, said deponent being first duly affirmed and cautioned to depose the whole truth, doth depose and say that he resides in the county of Mason; that he is aged 49 years, and further sayeth in answer to the several interrogatories propounded to him by the complainants, that he was at the house of Major Walter Lac–y at the time Simon Kenton's deposition was taken in this suit in the year 1832; that his deposition was taken before him as a justice of the peace for Mason County.

2d. In answer to the second, this deponent sayeth that Simon Kenton in his deposition represented the cabin originally made by him to have been made near *the* the flat fork of Johnson's fork of Licking on the north west side of said fork.

3d. In answer to the 3d. this deponent sayeth. that from the manner in which the said Kenton expressed himself in pointing out the ground on which he built the cabin, that he, Kenton, had his doubts as to the place, saying that the face of the country had greatly changed.

4th. In answer to the fourth this deponent sayeth Simon Kenton in answer to a question propounded by Walter Lac–y, did virtually contradict what he had stated *in* in a former part of his deposition on account of which Mr. Wickliffe remarked to him that if the statements he then made was true, his deposition was useless, and did not write down the expressions of Kenton, but after some explanation Kenton concluded he was mistaken upon the whole, from Kenton's expressions, expressions of doubt, I was confident he spoke more from impression than from a knowledge of the fact in reference to the place where the cab*b*in was located.

5th. In answer to the 5th this deponent sayeth that Robert Wickliffe wrote the deposition of Simon Kenton, and further this deponent sayeth not.

LEVI VAUCAMP.

Kentuck–, Mason County, sct.

I, James Artus, one of the justices of the peace in and for the County of Mason, State of Kentucky, duly commissioned, sworn and acting as such, and by virtue of my commission being on– of the judges of the County Court in and for said county, do certify that at the request of the plaintiffs in said suit I caused the deponent Levi Vaucamp to come before me at the time and place stated in the caption, that I did not cause any notification to be given to the adverse party because the witness aforesaid was only to depose in answer to certain interrogatories certified to me from said United States Court, which are herewith enclosed and returned, the said witness was by me carefully examined, cautioned and sworn to testify the whole truth in answer to the interrogatories put to him, that is to say, the said Vaucamp in answer to the five interrogatories to him and Atherson Owens, the said deposition of said Vaucamp was wholly reduced to writing and read by himself in my presence; and I do further certify that I am not of counsel or attorney to either of the parties, nor interested in the event of the cause; and the said Vaucamp testified that he had no interest in

the event of said suit; all which I do certify to said Court as the cause and manner wherefore said deposition was taken. Given under my hand this 25th day of October, 1834.

JAMES ARTUS.

Deposition of John Warick.

Also the deposition of John Warick at the counting-house of Elijah Johnson & Son in the village of May's Lick on the 24th day of October, 1834, taken for the same purpose, said deponent being first duly sworn and cautioned to depose the whole truth, deposeth and sayeth that he is aged 57 years, and saith in answer to the first interrogatory.

This deponent saith he became acquainted with the lands in controversy about the year 1794 or the winter before *Hawe's treaty.*

2d. In answer to 2d interrogatory, this deponent sayeth, at the time alluded to above, he lived with Mr. Daniel *Runior* who live– at the mouth of the *buor* fork of the flat fork of Johnson's fork of Licking for the space of three months; during that time he was in the habit of looking around the land in the neighbourhood and viewing such curiosities as presented themselves to him.

3d. In answer to 3d this deponent sayeth, that he recollects of passing down the flat fork of Johnson, as much as twice, once in company with David *Runior*, and that he passed down on the north-west side of the flat fork of Johnson, principally, and that in passing down he saw no appearance of improvements of any kind below the mouth of the *brier*-fork except an improvement made by a man by the name of David *Waid*, at the mouth on the lower side of the brier-fork.

4th. 5th. and 6th. In reference to the 4th. 5th. and 6th. interrogatories, this deponent sayeth he knows nothing.

7th. In answer to the 7th. this deponent sayeth that he never saw but three cabins, such as are called improvement cab*b*ins, all of which were within two miles of each other, and that he would not have known their use if he – not have seen Simon Kenton point out one of them lying on the waters of Mill Creek near the head waters of the flat fork of Johnson, which was shown by said Kenton, as Jacob Drinan's improvement; the others he saw, one on the flat fork, between three-fourth– and a mile above the mouth of the brier fork, on the north-west side of the fork, the other stood about a quarter of a mile above the mouth of the brier, between the two forks nearest to the brier fork, between a sink hole and a Buffaloe or bear *wallen* waller. These cab*b*ins had the same appearance of that shown by Kenton an– Drinen's improvement except he thinks they were a little larger and built of less durable timber, being more decayed. Drinen's improvement was built principally of *blu*– ash poles, and these had some buckeye-poles which were considerably rotten, and some of them had fallen in, and farther this deponent sayeth not.

JOHN WARICK.

I Levi Vaucamp, one of the Justices of the Peace, in and for the county of Mason in the State of Kentucky, duly commissioned and sworn, and acting as such, and by virtue of – Commission, being

one of the Judges of the county Court, in and for said county, do certify that at the request of the plaintiff's, in said suit I caused the deponents Athelston Owens, John Ferguson, David Runion. Matthew Gray, Jasper Morris, William Allen, and John Warrick, to come before me at the time and place stated in the several captions, that I did not cause any notice to be given to the adverse party, because the witnesses aforesaid, were only to depose in answer to certain interrogatories certified to me from said United States Court, which are herewith enclosed and returned, the said witnesses were by me carefully examined, cautioned and sworn to testify the whole truth in answer to the interrogatories put to them respectively, that is to say, the said *Sevens*, in answer to the (three, four or five) interrogatories put to him and myself, and said *Forgeson*, Runion, Gray, Morris, Allen, and Warrick, in answer to the seven interrogatories put to th- said Forgeson, Morris and others, the said deposition of said Owens, was wholly reduced to writing by himself in my presence, and the depositions of all the other witnesses were wholly reduced to writing by me, in presence of each witness respectively, and then and there subscribed by each respectively in my presence that the cert*ified* by the aforesaid Athelston Owens, who is county surveyor for the county of Mason, and herewith enclosed is the same to which the witnesses John Forgeson, David Runion, and Matthew Gray, refered in their depositions and I do further certify that I am not of counsel or attorney for the parties *in* the event of – cause, all the witnesses testified they had no interest in the event of this suit, all which I do certify to said Court as the cause and manner, whereof said depositions were taken.

LEVI VAUCAMP.

Deposition of Simon Kenton.

The State of Ohio, Logan County, ss.

The deposition of Simon Kenton, of the State of Ohio, before me Robert Smith, the undersigned an associated Judge of the Court of Common pleas, in and for the County of Logan, and State of Ohio, taken at my proper residence this 15th of April 1826, between the hours of 10 A. M. and 4 P. M. of said day to be read as evidence in a suit in Chancery, now depending in the 7th Circuit Court of the United States of America, in and for the Kentucky District, wherein Thomas Bodley, Robert Pogue, Jonathan Rose, Benjamin Umstead and Robert Taylor, for himself and on behalf of the infant children *of* Robert Taylor and John D. Taylor, Eliza Sandridge, intermarried with Larkin A. Sandridge, late Eliza Drake and William Drake, children of Reemy Drake, dec'd, and heirs at law of Abraham Drake, dec'd. Complainants and Ambrose Walden, deft. the said deponent being first duly sworn, and cautioned to depose the whole truth, doth depose and say that he came to the State of Kentucky, in the year 1771, and became acquainted with the lands on Licking in the year 1775, in that year became acquainted with the Blue Licks, and Buffaloe roads, in that part of the country. This deponent was acquainted with Jacob Johnson, who was entittled to the settlement and pre-emption that was afterwards granted to his heirs at law, Peter Johnson, by the Commissioners in 1780, the said Jacob Johnson, was lost or

missing in the 1777, and was never seen or heard of since, so far as the deponent has ever known, and this deponent assisted in making the location and procuring the certificate for the settlement, and pre-emption to which Jacob Johnson, had entitled himself and which was granted to his heir at law in 1780, and before that time the lower blue licks, was notorious and generally known by the name of the Blue Lick, and lower Blue Lick, the Buffaloe road that lead from the lower Blue Lick, forked at the battle ground, about a mile from the Lick into three prongs, one run out on the waters of Indian Creek, and did not lead on to Limestone, this was called the lower road, the other two roads were called the middle road and upper road; and after crossing Johnson's fork and the north fork of Licking, those two roads came together on Warren's branch the waters of Law*rances* Creek, and then led on to Limestone, of those two roads the upper road was much – most travelled, and the largest and plainest road was the road on which Johnson's location was made from the upper blue licks, there was no Buffaloe roads that lead to Limestone. Johnson's fork acquired its name in 1776, and was generally– by that name in that year and ever since, it took its name from two men Jacob and Andrew Johnson, who improved on its waters, and Jacob Johnson, has obtained a settlement and pre-emption on account of said Jacob's being a resid*a*nt, &c., which pre-emption although granted to the heir of Jacob Johnson, was for a long time known as Jacob Johnson's settlement*s* and pre-emption. This deponent states that the upper road from the Blue Lick, or lower Blue Lick as sometimes called was notorious and generally known by the name of the upper road from the Blue Licks to Limestone, in 1780, and before that time, that when the location was made for Peter Johnson, heir at law to Jacob Johnson, the distance from the Blue Lick following the Buffaloe road, it was in and about nine miles to where the beginning of Johnson's entry was made, this deponent made the location and entry for Ambrose Walden, 1333 acres of land, and extended it to be on the east side of Jacob Johnson's settlement and pre-emption: this deponent assisted a surveyor employed by Col. Thomas Marshall to make some surveys on Johnson's fork, which had to adjoin said Johnson's claim: this was in 1784. On this occasion this deponent directed and superintended the running out said Johnson's settlement and pre-emption, as it ought to have been surveyed according to its location in the opinion of this deponent, but the survey then made by his direction as aforesaid, he believes was never returned or recorded; after this, he believes in the fall 1785, the claim of Walden for 1333 acres, was surveyed under the direction of this deponent, who was the locator for Walden's said claim, and he directed the survey for Walden so as to adjoin said Johnson's claim on the east side, as he had directed Johnson's to be surveyed before in 1784, as above stated; some time after said Walden's survey was made, one Arthur Fox surveyed said Johnson's settlement and pre-emption by measuring from the Blue licks, and cutting off some of the bends of the roads, and in that way making nine miles, he, this deponent, states,

that when he undertook for Ambrose Walden to locate his land, he made a contract to have one-third for locating, but by the time this deponent had made the location, said Walden had paid him in land warrants, to his full satisfaction, and this deponent had no further claim for compensation of any kind. Some time afterwards this deponent sold his contract with Walden to Fox and Wood, but recollecting that Walden had paid this deponent for locating his land, by land warrants, which he had let him have, this deponent immediately went to Fox and Wood and procured them to take the land this deponent had located, with the warrants he had obtained as above stated, from said Walden, but this deponent neglected to take back the contract on Walden so delivered to Fox and Wood, and they afterwards sold it to Creig and Johnson, and who may now hold it or claim under it; this deponent does not know, but states that Walden satisfied said contract to this deponent before he let Fox and Wood have it as above stated, this deponent showed the beginning corner of Walden's 1333 acre survey to Athelston Owens, the surveyor who was making out surveys in suits in the United States Seventh Circuit Court, in and for the Kentucky District, in which suits Walden's lessee was plaintiff, and Nancy Tr*ecy* and others were defendants, this deponent states he made Walden's said location of 1333 acres, to include cabins on the north side of said Johnson's fork of Licking, built by Simon Butler; this deponent states that said cab*b*ins was built by himself, that when he built them he was called and known by the name of Simon Butler, and the said deponent had acquired that name and was so known at the date of said location for Ambrose Walden, and further this deponent saith not.

SIMON KENTON.

The State of Ohio, Logan County, ss.

I, Robert Smith, an associate Judge of the Court of Common Pleas, for the county of Logan, and state of Ohio, duly commissioned, sworn and acting as such, do certify that at the request of the defendant in said suit, I caused the deponent in the foregoing deposition to come before me at the time and place stated in the caption, because the witness resides more than 100 miles from Frankfort, the place of holding the said Court of the said Court of the United States, and is *antient*, that I did not cause any notification to be given to the adverse party of the time and place, so as to be present at taking the same, because the said adverse party did not reside within 100 miles of the place of taking the same, and had no agent or attorney known within that distance of the said place of caption; the said witness was by me carefully examined, cautioned and sworn, then and there to testify the whole truth; the said deposition was wholly reduced to writing by me in presence of said witness then and there, and subscribed by him in my presence; that I am not of counsel or attorney to either of the parties, or interested in the event of the cause, all of which I do certify to said court as the cause and manner wherefore the said deposition was taken. Given under my hand and seal this 15th day of April, 1826.

ROBERT SMITH, *Associate Judge.*

Deposition of Athelston Owens.

The deposition of Athelston Owens before me, Levi Vaucamp, the undersigned, one of the Justices of the Peace in and for the commonwealth of Kentucky, and county of Mason, being by virtue of my commission, one of the Judges of the County Court in and for the county aforesaid, duly commissioned, sworn, and acting as such, taken on this 21st day of October, in the year 1834, at the dwelling-house of Edwin P. Pogue, in the county aforesaid, to be read as evidence in a certain suit depending in the Court of the United States in and for the seventh Circuit and Kentucky District, holden in Frankfort, wherein Thomas Bodley's heirs, and Robert Pogue's heirs are complainants, and Ambrose Walden, &c. are defendants in chancery; said deponent being first duly affirmed, and cautioned to depose the whole truth, doth depose and say, that he resides in the county of Mason, that he is aged 42 years, and further saith in answer to the several interrogatories propounded to him by the complainants, that he, this deponent, was at the house of Major Walter Lacey at the time Simon Kenton's deposition was there taken in this suit, this deponent believes in the spring or summer of the year 1832.

This deponent, in answer to the second interrogatory says, that the place which said Kenton represented to him as that at which the cabin was built, is about 10 or 15 poles from the flat fort of Johnson's fork, on the west or north-west side of the creek, near an old mill-dam, and is refered to by this deponent on a copy of the connected plat first returned and filed in this suit, I believe by the letter (a.)

To the 3d this deponent saith, that not being much in the room where Kenton's deposition was taken, whilst taking it, he has no recollection of said Kenton's expressing the doubts enquired of in this interrogatory.

To the 4th, this deponent makes the same answer, and to the 5th, this deponent says that Robert Wickliffe, Esq. wrote said Kenton's deposition. And further this deponent nothing.

ATHELSTON OWENS.

Deposition of John Forguson.

Also the deposition of John *Forgusson*, at the same time and place, taken for the same purpose. Said deponent being duly sworn and cautioned, deposeth and saith, that he is a resident of Fleming County, Ky. that he is aged 72 years next March, and sayeth to the first interrogatory,

That he was conversant with the lands in controversy in this suit, in the year '94, and ever since.

2d, A*n* sayeth to the 2d interrogatory, that in the year '94, he settled at Mayslick, and was in the habit of visiting his friend, Mr. Daniel Run*ion*, the father of David, who lived at the mouth of brier fork, and that he occasionally hunted on the flat fork, and in the year '96 he was engaged in building a mill on the flat fork about

a mile *d* and one quarter below the brier fork, that he then cut a considerable quantity of timber, and became intimately acquainted with the lands in that neighbourhood, from the head to the mouth of the north fork.

3d. And the 3d Interrogatory he sayeth, that he never saw any ancient cabins, or the remains of cabbins or improvements, on the north side of the flat fork, — Johnson's fork below the mouth of brier fork.

4th. In answer to the 4th, he sayeth that he knoweth it well, and made the first improvement in company with Abraham Shockey that was mad — then, and previous to that time, which was in the year 1796, there was no appearance or mark of an ax, and the first building he made was a pig-pen, represented on the plat now lying before me by the letter B, a few days after he built a cabin for his family to live in, represented on the plat by the letter C, the next year he built a saw-mill about twenty poles below the cabins above named, the dam of which was about one or two rod above the pig-pen, which stood about six rods from the ground shown by Simon Kenton as the ground on which the cabin stood, as represented to me by Athelston — the survey or marked on the plat now lying before me by the letter a. These improvements are 458 poles below the mouth of the brier fork which — knows by carrying the chain and measuring on yesterday.

5th. Answer to the 5th Interrogatory he sayeth, that in the year 1794 he first became acquainted with the ground designated by Simon Kenton, as represented in his deponent's answer to the 4th Interrogatory, and at the time there was no appearance of a cabbin or improvement at the spot or near to it.

In answer to the 6th he sayeth, that from his acquaintance with the ground about that place and below it on the creek, that if there were any cabins or improvement there, he would have discovered them, therefore he thinks there was none, for he was in the habit of noticing such things at that day, and would have recollected it if he had seen any.

7th. In answer to the 7th he sayeth, that in the year 1794 he saw an old cabin on the north-west side of the flat fork of Johnson, about three-fourths of a mile above the mouth of the brier fork, as shown by this deponent and Mathew Gray on yesterday, and represented on the plat now lying before me by the letter a, and that the same year he was shown a cabin of ancient date, on or near the brier fork, about a half-mile from the mouth, on the north-west side of said fork, this deponent saith, that from the appearance of the cabins above alluded to, they had the appearance of cabins built for settlement-rights and not for dwellings, as there were no doors cut in them, and further this deponent saith not.

JOHN FERGERSON.

Deposition of James L. Runyon.

Also the deposition of David L. Runyon at the same time and

place, taken for the same purpose, said deponent being first duly sworn and cautioned to depose the whole truth, deposeth and saith, that he is a resident of Fleming County, Ky. that he is aged 55 years, and saith in answer to the first Interrogatory, that he became acquainted with — lands in controversy in the year 1794 or earlier.

2d. In answer to the 2d Interrogatory he sayeth, That at the time referred to above, he was in the habit of hunting and driving up his father's cows, and passed almost every week from the head to the mouth of the flat fork of Johnson, my father about that time settled at the mouth of the brier fork.

3d. In answer to the 3d he sayeth, that he saw no cabin on either side of the flat fork of Johnson, below the mouth of the brier fork prior to the year 1796, when John *Forgeson* made his first improvement.

4th. In answer to the 4th he sayeth, If it be the place pointed out by John *Forgeson* in his deposition near the old saw mill this deponent knew it well as early as the year 1794, and at that time there was no appearance of a cabbin or improvement at or near that place. John Forgeson and Abraham Shockey made the first improvement that was made on the flat fork of Johnson, below the mouth of brier fork in the year 1796. A dwelling house and other buildings were first built for John Forguson, and the next year a saw mill was built for Shockey by said Forgeson.

5th. In answer to the 5th he sayeth, That if the place designated by Simon Kenton, on which he says there was a cabin, be the same marked on the plat now lying before me marked by the letter a near the old mill dam, about a mile and a half below the mouth of brier fork, there was no cabin or appearance of a cabin prior to the year 1794 or before the improvement made by Forguson above alluded to.

6th. In answer to the 6th he sayeth, That from his acquaintance with the ground at or about that place and below on the creek, he thinks there could not have been any improvement or cabin which could have escaped his acquaintance, as the cabins made for improvements and standing at that — were rather singular, having no door, and a few trees deadened round them, and were easily distinguished from dwelling houses.

7th. In answer to the seventh he sayeth, That about the time of his first acquaintance with the country he saw a cabin on the northwest side of the flat fork of Johnson about three fourths of a mile above the mouth of the brier fork which was of ancient appearance, at that time it had the appearance of those cabins designated as improvements having no door in it, and that he knew of no other cabin on the flat fork, except one built by David Wood, at the mouth of brier fork to live in, and he believes from the best information that the said Wood is now dead, and further this deponent saith not.

DAVID L. RUNYON.

Deposition of Mathew Gray.

Also the deposition of Mathew Gray at the dwelling house of said Gray in the County of Mason aforesaid, (being aged and very infirm, and not able to attend at the place where the other witnesses deposed), on the same day, 21st Oct. 1834, for the same purpose of the above deposition. This deponent being first duly sworn and cautioned to depose the whole truth, deposeth, that he resides in said county of Mason, and further saith that he is aged 79 years this month, and in answer to the first interrogatory he saith, That he became acquainted with the lands in controversy in the year 1794.

2d. In answer to the 2d interrogatory he saith, That at the time referred to above, he was in the habit of hunting up and down the flat fork of Johnson, and lived near the head waters of said creek from that time to this and has since that been intimately — the lands in controversy.

3d. In answer to the 3d he sayeth, That he don't now recollect that — ever saw any ancient cabins or improvements below the mouth of brier fork of the flat fork of Johnson.

4th. In answer to the 4th, he sayeth that he knows nothing.

5th. In answer to the 5th, he sayeth that he knows nothing.

6th. In answer to the 6th, he says he knoweth nothing.

7th. In answer to the 7th, he sayeth, That on yesterday he met with John *Forgeson* on the flat fork of Johnson, he supposes about three-fourths of a mile above the mouth of the brier fork where he distinctly recollects to have seen a cabin or improvement of *apearant* ancient date on the north-west side of said fork, and he also recollects that about three-quarters of a mile above that on the same branch there was another ancient-looking ca*b*bin on the same side of the creek, the cabins alluded to, he says, were such as was at that time recognised as cabins made for ancent improvements; have no doors cut in them, and almost rotten at the time he first knew them, and he also states the ca*b*bins alluded to were in the same neighbourhood where Jacob *Drenous* improvements were made, under which this deponent settled and now lives, and further this deponent saith not. MATHEW GRAY.

Deposition of Jasper S. Morris.

Also the deposition of Jasper S. Morris taken at the house of Asa R. *Runion* in the County-Mason aforesaid, on the 22d of October, 1834, for the same purposes of the above depositions, this deponent being first duly sworn and cautioned to depose the whole truth, deposeth that he resides in said County of Mason, and further saith that he is aged near 46 years, and in answer to first interrogatory deposeth and saith in answer to the first interrogatory: I was acquainted with the land in controversy as early as the year 1800, and the lands adjoining.

In answer to the 2d interrogatory. In the year 1800 I went to

school to a school house standing on the west side of the brier fork, about a half a mile from the mouth of said fork, and a short distance from said school house there then stood a pole cabin, similar to those called improvement cabins, which cabin was beginning to fall down and had the appearance of having been built some years, as to the 3d, 4th, 5th, and 6th interrogatories, I know nothing, the 7th interrogatory, so far as I know is answered in the 2d; further this deponent sayeth not.

J. S. MORRIS.

Deposition of Wm. Allen.

Also the deposition of Wm. Allen, at the same time and place with the last taken for the same purpose of the above depositions. This deponent being first duly sworn and cautioned to depose the whole truth, deposeth, that he resides in the County of Mason, and further saith that he is aged 77 years next February, and in answer to the 1st interrogatory he saith, that he became acquainted with the lands in controversy in March, 1795.

2d. In answer to 2d, this deponent saith, that at the time alluded to above, he settled on the waters of the brier fork of the flat fork of Johnson and the lands he bought *layed* adjoining Jacob Johnson settlement and pre-emption which caused him more particularly to examine the situation of the claims.

In answer to the 3d, 4th, 5th, and 6th interrogatories this deponent states he knows nothing.

7th. In answer to the 7th interrogatory this deponent saith: That about a quarter of a mile above the mouth of the brier fork of the flat fork of Johnson, between the forks, rather nearer the brier fork, he saw as early as the year 1795, a cab*b*in which had the appear*s* of improvement*s* cab*b*ins, this deponent saith that he was not in the habit of hunting only for the purpose of driving up his sheep.

WILLIAM ALLEN.

MASON COUNTY, ss.

THOMAS BODLEY and ROBERT POGUE'S heirs, Complainants, vs. AMBROSE WALDEN, et al. Defendants. } In Chancery in the 7th Ct. Ct. U. S. for the D. Kent'y.

At the request of the Complainants, I have this 20th day of October, 1834, laid down in connection, the above surveys of land in controversy herein, which connection is explained by the following

Notes.

1.2.3.4. Represents Jacob Johnson's settlement survey of 400 acres, laid down according to the Interlocutory Decree herein.

5.6.7.8. Jacob Johnson's pre-emption of 1,000 acres lying about the settlement survey, according to Decree.

9.9.9.9. Walden's survey of 1,333⅓ acres, laid down agreeably to said Decree in a square, based upon the S.E. side line of the settlement.

10.10.10.10. Walden's survey, as actually surveyed originally.

6.7.11.12. Walden's survey, laid down at the request of the Complts., based upon the north east side line of Jacob Johnson's pre-emption.

a. . . . . The place shewn by Simon Kenton, where the cabin referred to in his deposition taken herein, stood.

b. . . . . A place shewn by John Ferguson where he built a pig-pen or sty, in the year 1796.

c. . . . . The place at which said Ferguson built a cabin, in the year, 1796, as shewn by himself.

d. . . . . The place shewn by said Ferguson and Mathew Gray, where a cabin once stood, say 40 years ago.

The flat fork of Johnson's fork, and the brier fork of the flat fork are designated on the face of the plat.

ATHELSTAN OWENS,
Surveyor of Mason County.

Duncan vs. *Walden.—Co. Record.*

Be it remembered, that heretofore, to wit, on the 26th day of January, in the year, 1827, came David Duncan into the Clerk's Office of the Seventh Circuit Court of the United States, in and for the Kentucky District, and filed the following Bill against Ambrose Walden, to wit:

"To the Honourable the Court of the United States for the Seventh Circuit and Kentucky District, in Chancery sitting, David Duncan complaining, sheweth, that a certain Peter Johnson, heir of Jacob Johnson, on the 7th day of January, 1780, obtained from

the Court of Commissioners, duly authorized to grant the same, a certificate for a settlement of 400 acres of land on the east side of the Buffaloe Road, leading from the Blue Lick to Limestone, nine miles from the Lick, on the upper road by the Decedent's raising corn, &c., and a pre-emption of 1,000 — adjoining—

"That on the 21st day of February, 1780, he made an entry with the proper surveyor for 400 acres, being the settlement right aforesaid, in substance with his certificate.

"And on the 30th day of May, 1783, he also made an entry on the pre-emption, having previously obtained a warrant, therefore, adjoining his settlement on the south and east, and on the north and west sides.

"That the entries aforesaid, both contained all the specialty in such cases required by law, and being surveyed in strict conformity to their terms and true construction, a grant issued for the settlement on the day of 17 and for the pre-emption on the day of 17 to a certain

"Your Orator would further state, that on the 31st day of July, 1783, an entry was made with the proper surveyor, in the name of John Tibbs and others, for 20,000 acres of land, in virtue of Treasury Warrants, beginning at a large black ash and a small buckeye, marked thus J. T., on the side of the Buffaloe Road, leading from the Lower Blue Licks, a north-east corner and about 7 miles north-east by east from the said Blue Licks, running thence due north 1264 poles, thence S. 1264^{2} poles, thence W. 2529^{4}.

"And on the 17th day of October, 1783, another entry was made with the proper surveyor, in the name of John Tibbs and Henry Crutcher, in virtue of Treasury Warrants for 10,000 acres of land, beginning at a black ash and small buckeye, marked thus J. T., on the side of the Buffaloe Road, leading from the Lower Blue Lick, a north-east corner and about 7 miles north-east by east from the said Blue Licks a corner of an entry of 20,000 acres, made in the name of John Tibbs, John Clark, John Sharp, David Blanchard and Alexander McClain, running thence with a line of the said Tibbs, &c. due east 1600 poles, thence S. 1000 poles, thence W. 1600 poles, thence north 1000 poles to the beg.

"That both of those entries were certain and so special, that all others might be able with safety to appropriate the adjacent residue, and being surveyed in strict conformity to their *terms*, a patent was regularly obtained upon the former by Thomas Bodley, the purchaser thereof, on the day of 18 and by a certain Robt. Rutherford, as assoce. of Crutcher, and a certain Willoughby, heir at law of John Tibbs, a grant was obtained upon the latter entry and survey, on the 26th day of August, 1790, all of which will more fully appear by reference to the several entries and patents, copies whereof are filed herewith and referred to as parts of this Bill.

"That your Orator on the day of purchased from Arthur Fox, the Grantee named as aforesaid, in the patents founded on the settlement and pre-emption aforesaid, in the name of John-

son, two hundred acres, a part in the settlement and a part in the pre-emption, and on the day of 1795, settled and improved the same, and has continued to reside thereon ever since until evicted by process from your Honourable Court, as hereafter set forth, and being threatened by a suit upon the claims of Tibbs and others for 20,000 acres as aforesaid, and 10,000 acres, and apprehending that those claims would prevail, he on the day of 18 made a compromise with Bodley, who, he understands, has acquired the right in both those claims, conveying to him thirty-six acres of his said tract, and Bodley made a Deed to him for the balance, amounting to 179 acres and some poles, as your Orator believes, for his original purchase contained a surplus. Thus your Orator believes he has acquired a perfect investiture of all right conferred by either of the entries and surveys aforesaid, to the said tract of 179 acres, all of which he believes cover some portion of it, he trusts he will be able to exhibit in due time full evidences of the purchase and compromise aforesaid, but has not them at present to file. Your Orator had consequently hoped he would be permitted to enjoy the land so purchased and improved, but a certain Ambrose Walden, a citizen of the State of Virginia, and who is made Defendant to this Bill, combining, &c., has surreptitiously and improperly obtained a patent of elder date than those under which your Orator claims for upwards of 1300 acres, including the tract of your Orator under pretence of an entry which your Orator charges to be vague, and a survey improperly and illegally made and under colour thereof prosecuted to Judgment an action of ejectment on the common law side of your Honourable Court against your Orator and others, but the demise having expired and the tribunals of our country having that it could not be extended, and your Orator understanding that nothing further could be done in pursuance of the Judgment, he deemed it unnecessary to file a Bill or take any measure to protect his possession, and so it remained for years, at length, however, without any intimation to your Orator that more was designed, and whilst he believed himself perfectly secure, the common law Court as he is informed and believes, enlarged the demise and authorized a writ of possession against your Orator it is at least certain, that to the utter surprise and extreme perplexity of your Orator, the Agent of the Defendant and the Marshall of your Court, in the month of January, 1836, called on your Orator prepared to dispossess him, and at that inclement season of the year, would, as they declared and as your Orator believes, have evicted him from the land which he considers his own in equity and the improvements which he certainly made, and are of considerable value and for which he has received no compensation or indemnity, unless your Orator would consent to become the Tenant of the Defendant and undertake to pay him rent, accordingly, your Orator, therefore, ignorant as to his redress and without the opportunity of competent advice, submitted to the terms proposed him *him* and accepted a lease *for* one year at one dollar and fifty cents p. acre for the cultivated land, amounting to

about 80 acres, and the term having expired, your Orator has reason to apprehend and does really fear that he will be required to pay the rent and surrender the premises, unless protected by the interposition of your Honours, all which actings, &c. are contrary to equity, &c. &c. In tender consideration whereof, &c. &c. To the end, therefore, that the Defendant may true and perfect answer make to all and singular the premises, aforesaid, more especially, that he may set forth and show if he has in equity any claim to the premises, &c., your Orator prays your Honours by your decree to compel the Defendant to him his title so improperly acquired to the land of your Orator, that if this be impossible, you will require that he be compensated for his improvements, &c., and that you will grant him such other and further relief as his case may require, &c., May it please your Honours to grant to your Orator your writ of Spa. restraining and enjoining a collection of the rent or a dispossession of the premises, until the matters of this Bill be heard, &c. &c.

JA. HAGGIN.

Franklin County, ss.

This day Joseph Duncan made oath before me a Justice of the Peace for the County aforesaid, that he is the agent of David Duncan the Complainant, and has been conversant with the matters alledged in the within bill. That he believes the facts therein stated are true as set forth.

Given under my hand this 23d day of January, 1827.

H. WINGATE, J. P.

Clerk of the Circuit Court of the United States for the 7th Circuit and District of Kentucky.

Let a subpœna with injunction issue agreeable to the prayer of the with bill on the Plaintiff entering into bond with Thomas Clark of Mason County, his security in the penalty of one thousand dollars.

Given under my hand this 25th of January, 1827.

JOHN BOYLE, D. J.

Spa. in Chancery, to wit:

[SEAL.] The United States of America to the Marshal of the Kentucky District Greeting, you are hereby commanded to summon Ambrose Walden to appear before the Judges of our 7th Circuit Court of the United States, in and for the Kentucky District, at the Capitol in Frankfort, on the first Monday in May next, to answer a bill in Chancery exhibited against him by David Duncan, and this he shall in no wise omit under the penalty of four hundred dollars, and have then there this writ. In testimony whereof John Marshal, Esq. Chief Justice of the Supreme Court of the United States hath caused the seal of our said Court to be here-

unto affixed, this 26th day of January, 1827, and of our Independence the 51st.

Attest, JNO. H. HANNA, C. C. C. K. D.

The Defendant is hereby restrained and enjoined from further proceedings, on a Judgment obtained in the District Court of the United States, in and for the Kentucky District for a certain tract of land in Mason County, so far as it includes the said David Duncan, until the matter can be heard in equity.

Attest, JNO. H. HANNA, C. C. C. K. D.

Marshal's Return, to wit: The Defendant not found, and he is not an inhabitant of this District, and I have served this writ on Edward Blackburn, said Defendant's agent, 1st February, 1827.

CHAPMAN COLEMAN, M. K. D.

And afterwards, to wit: At the May term of the Court aforesaid, and year 1827.

"It being suggested to the Court that the Complainant has departed this life, it is therefore ordered that this suit do abate, and on the motion of the heirs of said decedent, leave is given them to file a bill of revivor which is done accordingly, and said suit stands revived, which bill of revivor is as follows, to wit:

To the Honourable, the Judges of the United States Court for the 7th Circuit and District of Kentucky in Chancery sitting, John Patton and Nancy his wife, Thomas Patton and Amanda his wife, Henderson Duncan, Alfred Duncan, Mitchell Duncan, William Duncan, Jane Duncan, James Campbell and Mary his wife, James Lindsy and Nancy his wife, Martin Duncan, Benjamin Duncan, Joseph Duncan, Elizabeth Duncan, and Jane Duncan, respectfully show that on the day of 1827, a certain Duncan filed his bill in your honourable Court against setting forth his claim and title in equity to a certain tract of land in the county of Mason, shewing that the defendants had obtained a judgment in law for the recovery thereof in an action of ejectment, and was about to dispossess him the said Duncan, and praying among other things an injunction, &c. &c. All of which will more fully appear by reference to the said bill, your Complainants would further state that the said Duncan hath since departed this life, first making and publishing his last will and testament, devising the said tract of land to the complainants. They therefore pray that the said suit be revived in their names, and that your honours will grant to them such relief as prayed by their original bill, and as their case may require, &c.

Clarke's Heirs vs. *Walden.—Co. Record.*

Be it remembered that heretofore, to wit: on the 12th day of May, in the year 1826, came Benjamin Clarke's heirs by their Attorney into the office of the seventh Circuit Court of the United

States of America, in and for the Kentucky District, and filed the following bill in Chancery against Ambrose Walden, to wit:

To the Honourable the Judges of the Circuit Court of the United States, for the seventh Circuit and Kentucky District in Chancery sitting.

Your Complainants Judith Lacy, Susan Lacy, Mary Lacy, Thomas Lacy, Charles Lacy, Walter Lacy, and Daniel Lacy, heirs at law of Elizabeth Lacy, deceased, formerly Elizabeth Clarke, one of the children and heirs of Benjamin Clarke, deceased, all of whom are infants under twenty-one years of age, who sue by their father guardian and next friend, Walter Lacy, and Daniel Clarke, Susan Sumrall and her husband Joseph K. Sumrall, the said Susan being formerly Susan Clarke, daughter and one of the heirs of said Benjamin Clarke, deceased, Thomas Clarke, Mary H. McMillan, daughter and heir of Mary McMillan, deceased, who was formerly Mary Clarke, daughter and one of the heirs of said Benjamin Clarke; said Mary H. McMillan being an infant under twenty-one years of age, who sues by her father guardian and next friend, Andrew F. McMillan and Virginia Clarke, the said Thomas and Virginia being also children and heirs of said Benjamin Clarke, deceased, and the said Walter Lacy and A. F. McMillan aforesaid, (all citizens of the State of Kentucky) shew unto the Court that on the seventh day of January, 1780, Peter Johnson obtained from the commissioners a certificate of settlement and preemption as heir at law to Jacob Johnson, deceased, to a tract of land in the district of Kentucky, herewith exhibited as a part of this bill, marked (A.) that said Johnson entered his said settlement of 400 acres with the surveyor, as appears by a copy thereof herewith exhibited, marked (B.) and on the 30th May, 1783, the said Johnson entered the preemption thereto appendant in the manner described by a copy of said entry herewith exhibited, marked (C.), that said settlement and said preemption were duly surveyed according to law, and the said locations, and thereupon grants issued to John Reed and Arthur Fox the assignees of said Johnson, which surveys bear date viz. the survey of the settlement on the 9th April, 1789, and of the preemption three several surveys bearing date the 10th April, 1789, the grants all bearing date 20th February, 1793, which more at a large appears by said grants herewith exhibited, marked D. E. F. G.

Your Complainants aver that the locations and descriptions in said certificate and entries of the settlement and preemption, were special and precise, that the objects of location used in said entries were notorious at their respective dates, and might have been found by others by reasonable diligence of enquiry, so as to have enabled others to appropriate the adjacent residuum, that said surveys were conformable to said entries, and the grants issued thereon were legal, and in pursuance of the requisitions of law, so that the said claims of the settlement and preemption in their beginning, progress and consummation were legal and valid claims.

Your Orators state a division of said 1400 acres of land has been made between the interests of the said co*pantees* Reed and Fox, so

that their interest which first were joint or as tenants in common, has been severed and held in severally by metes and bounds; that in the year 1789, the said Benjamin Clarke (the ancestor of your Complainants as herein before specified) purchased of said John Reed his part of the said entries, and received from said Reed an obligation to convey the same to him the said Clarke, which bond was afterwards substantially complied with by a Deed executed by the heirs of the said John Reed, after his death, bearing date on the first day of August, 1815, and duly recorded in the County of Mason, where the land lies, and which Deed is herewith exhibited as part of this bill marked (M).

The Bond aforesaid was, upon the execution of said Deed delivered to Anthony F. Reed, so that it cannot now be exhibited, but the proof of execution will in due time be made. Your Orators state, that at the time of the purchase aforesaid, made by said Benjamin Clarke, of said Reed; said Benjamin lived in Virginia, but afterwards in the year 1799 said Benjamin removed from Virginia and settled on his said half of said 1400 acres, and he and his family lived there until his death, and his heirs still continued to reside on it after his death, until dispossessed of a part of the said tract by the process of this Honourable Court in the manner herein after stated.

Your Orators further show, that on the 31st day of July, 1783, John Tibbs, John Clarke and others, made an entry for 20,000 acres of land in the said District of Kentucky, on treasury warrants, as appears more fully by an attested copy of said entry herewith exhibited, marked (H) as part of this their bill, that on said entry a survey of 16,000 acres was made on the 8th June, 1796, and therefore a grant regularly issued to Thomas Bodley as assignee, as will more at large appear by an attested copy of said grant herewith exhibited, marked (I.) Your Orators aver that the said entry of Tibbs &c. was and is special and precise, good and valid, that the objects alluded to in said entry were before and at its date notorious to the generality of persons acquainted in that part of the country, that the precise locality of said land so entered might have been found by others using due diligence of inquiry, so as to enable the holders of other warrants or claims to locate the adjacent residuum, that this entry has in various suits in the State Courts, and in the Supreme Court of the United States, been sustained and adjudicated as special and precise, legal and valid, in so much so, that the notoriety of the objects of location and description used in said entry, as existing at and before its date has, by reputation and the adjudications thereon been so generally diffused, that Ambrose Walden himself the defendant herein after named, has personal knowledge of the notoriety which attached and belonged to said objects of description employed in said entry, and well knows from information and reputation, that such notoriety did exist at the date of said entry, they aver, moreover, that the survey of 16,000 acres so as aforesaid, made by virtue of said entry, was and is in strict conformity to said entry and to law, and the grant thereon to Bodley regularly and legally issued to him as assignee, according to the rules and regulations of

the Land Office, so that the said entry, survey and grant constitutes a legal, special, precise and valid claim in law and in equity. They state that said 16,000 acres so as aforesaid granted to said Bodley, covered and swallowed the whole of the said tracts of land, so as aforesaid patented to Reed and Fox by virtue of said Johnson's settlement and preemption, and said Benjamin Clarke finding the whole of his tract and farm, and dwelling, and appurtenances, covered by said patents to Bodley in the year 1805, purchased of said Bodley so much of said grant founded on the entry of Tibbs &c., as covered the said half of Johnson's settlement and preemption, so owned and possessed by said Benjamin and obtained from said Bodley Deeds therefor, which are herewith exhibited as part of this bill, marked (K and L). Your complainants state, that on the 22d day of May, 1780, one Ambrose Walden caused to be made in his name, an entry of 1333 acres upon a treasury warrant, "on the east side of Jacob Johnson's settlement and preemption, on the waters of Johnson's fork," &c. as by an attested copy thereof, herewith exhibited more fully appears. Your Orators allege, that said entry of Walden was and is vague, uncertain, and invalid, and illegal, that an illegal survey has been executed under colour of said entry, and supposing the said entry could be supported as valid, which they by no means admit, yet the said survey is variant from said entry and therefore illegal, as well because of the insufficiency and uncertainty of said entry, as because of the departure of the said survey from the entry, by virtue of which said entry and survey so fraudulently and improperly made, the said Ambrose Walden obtained illegally and fraudulently, a grant elder in date than the grants aforesaid to Reed and Fox, and to Bodley.

Your Orators state, that by virtue of said elder grant, the said Ambrose Walden caused declarations in ejectment to be served in February, 1797, and Thomas Langley and Joshua Mannin, who were then tenants, in possession as your Orators is informed, of the part of the land so as aforesaid purchased by said Benjamin Clarke, of said Reed, and in July, 1798, a Judgment in ejectment was had by confession, with reservation of equity as by the records of said cases in ejectment remaining of record in this Honourable Court, and of the records of the District Court of Kentucky, then exercising the power and jurisdiction of a Circuit Court of the United States more at large appear, to which your Orators refer as part of this their bill, after said confession of Judgment, the heirs of said John Reed and of said Anthony Fox their next friend, exhibited their bill in equity against said Walden, with an injunction against the Judgment at law aforesaid, setting up the settlement and preemption of Peter Johnson aforesaid, as the superior claim and of greater dignity in law and equity to that of Walden and the case in chancery, was continued on the rule docket until 1825, November, when it was dismissed for want of replication to the answer of Walden, as by reference to the said bill, answer and proceedings and records of this Honourable Court will at large appear, to which your Orator begs leave to refer as parts of this bill.

They state that after said dismission for want of replication, the said Walden applied for and obtained leave to extend the demise which had expired, and upon that Judgment in ejectment a writ of possession issued to which they refer as part of this their bill, and George Taylor and Gabriel Pritchet who were then tenants holding under your Orators, and rendering rent to your Orators, were turned out of possession by said Walden, under said Judgment and writ of possession, and said Walden now has possession of that part of your Orators' tract, so as aforesaid purchased of Reed and of Bodley, so far as said Walden's survey interferes with it, which is about 340 acres more or less, and the said tenements so taken from your Orators were part of the tract of 700 acres on which your Orator's ancestor in his lifetime and his heirs since his death, have lived and yet live, the first dwelling of their said ancestor was within the interference with Walden's survey, but after some few years said Benjamin built another house on said 700 acres, but outside of Walden's survey, but he continued ever after to possess, occupy and cultivate and cleared land and improvements which were within said interference by himself or by his tenants in his lifetime, and so have his heirs since his death, until dispossessed as aforesaid by the writ of possession from this Honourable Court.

Your orators aver that at the time when their ancestor took possession as aforesaid, he was wholly ignorant of the ejectment, or of the pendency of said suit in chancery, that he remained so during his life, and your complainants were ignorant of those proceedings until the writ of possession aforesaid came and dispossessed them; your orators shew that said suit in chancery was in the name of Reed's heirs, who had only a nominal interest, and all of whom were infants when the said bill was filed, and of Fox's heirs, who were also infants; that said heirs were ignorant of the suit; the lawyer who was employed as counsel for the complainants, Joseph H. Davis, Esq. was killed in the battle of Tippecanoe, and thus the suit slumbered on the rule docket without prosecution or defence until dismissed for want of replication as aforesaid.

Your orators had well hoped that said Walden, or his agent, upon being informed of these circumstances would not have dispossessed your orators until the matters could be heard in equity, but he has executed said writs of possession, and is enjoying the rents and profits of your orators' lands and improvements, by leasing out the same upon yearly rent, and refuses to restore your orators to possession, &c.

All which actings and doings were against equity, &c. In tender consideration whereof, and for as much as your orators are only to be relieved in equity, where elder legal titles obtained by fraud are made to yield to prior equities, &c. &c.

To the end therefore that said Ambrose Walden may be made a defendant hereto, that he may answer all the matters hereof as fully as if repeated by interrogatories, that he may say if he is not in possession of part of the cleared land, buildings, and improvements made by said Benjamin, if he is not in possession of the tene-

ments which were occupied by George Taylor and Benjamin Pritchett, that said Walden may be compelled to release his elder legal title to the interference with said Johnson's settlement and pre-emption, and said Tibbs and company's entry, so far as your orators have by their purchases under them become the proprietors of the land; that he may restore the possession to your orators; that he may account for the rents and profits since he has dispossessed your orators which have or shall accrue; that an account of said rents and profits may be taken and decreed to your orators, and that your orators may have such other and further relief as their case may entitle them to, upon all the matters herein before stated, and all the incidental matters of equity growing out of the same, and that said Walden may disclose whether he has any other patent or interference than his own claim and entry before described, and if so that he may set it forth, that the title and right of possession of the land claimed by your orators may be heard in equity and quieted. They, your complainants, who are citizens of the state of Kentucky, pray the process of this honourable Court against said Ambrose Walden, who is a citizen of the state of Virginia, directed, &c. commanding, &c. and as in duty, &c.

BIBB,
For Complainants.

SPA. IN CHANCERY, *to wit:*

[SEAL.] The United States of America, to the Marshal of the Kentucky District, Greeting: You are hereby commanded to summon Ambrose Walden to appear before the Judges of our seventh Circuit Court of the United States, in and for the Kentucky District, at the capitol in Frankfort, on the 24th day of our present May term, to answer a bill in chancery exhibited against him by Judith Lacy, Susan Lacy, Mary Lacy, Thomas Lacy, Charles Lacy, Walter Lacy, and Daniel, heirs of Elizabeth Lacy, deceased, formerly Elizabeth Clarke, one of the children and heirs of Benjamin Clarke, deceased, Thomas Clarke, Mary H. McMillan, daughter and heir of Mary McMillan, deceased, who was formerly Mary Clarke, daughter and one of the heirs of said Benjamin Clarke, an infant, by his father and guardian Andrew F. McMillan, and Virginia Clarke, the said Thomas and Virginia being also children and heirs of said Benjamin Clarke, deceased, Walter Lacy and A. F. McMillan, and this he shall in nowise omit, under the penalty of four hundred dollars, and have then there this writ. In testimony whereof, John Marshall, Esq. Chief Justice of the Supreme Court of the United States, hath caused the seal of our said court to be hereunto affixed, this 25th day of May, 1826, and of our Independence the 50th year.

Attest,

JNO. H. HANNA, *C. C. C. K. D.*

And afterwards, to wit, at the May term of the Court aforesaid, in the year 1830, (until which time this cause was continued on the rules)—

Came the complainants, by their counsel, and suggested to the Court that John Triplett had intermarried with Virginia Clarke, and by consent of the defendant, by his counsel, the said John Triplett is made a complainant in this suit with the other complainants.

And on a subsequent day of the term and year aforesaid,

Came the complainants, by their counsel, and it appearing to the satisfaction of the Court, that the defendant is not an inhabitant of this district, and he having failed to answer the complainant's bill, according to law and the rules of this Court, it is ordered, that unless the defendant appear here on or before the first day of the next term of this Court, and answer the complainant's said bill, the same will be taken for confessed against him, and the matters thereof decreed accordingly; and it is further ordered, that a copy of this order be inserted in some authorized newspaper printed in Frankfort, for twelve weeks successively.

Printer's Certificate, to wit:

I, Jacob H. Holeman, editor and printer of a public authorized newspaper printed in the town of Frankfort, and state of Kentucky, entitled the "Kentuckian," do hereby certify, that the annexed order of the 7th Circuit Court, Kentucky District, in the case Clarke's heirs and others, vs. Ambrose Walden, has been regularly inserted in the above named paper, by weekly insertions, for twelve weeks successively, the first insertion being made on the 28th day of May, 1830. Given under my hand the day and date above written.

J. H. HOLEMAN.

The subsequent orders and proceedings in this cause are copied in the record of Bodley, &c. vs. Walden, and by agreement tried with that cause.

STATE OF KENTUCKY, *First Judicial District, Fleming Circuit, ss.*

THOMAS BODLEY and ROBERT POGUE, Complainants,
against
AMBROSE WALDEN, and others, Defendants. } In Chancery.

Pleas before the Honourable the Judges of the Fleming Circuit Court, at the Court-House thereof, in the town of Flemingsburg, the 17th day of March, in the year 1825.

Be it remembered that heretofore, to wit: on the 18th day of May, 1815, the complainants aforesaid by their Attorney, filed in the Clerk's Office of the Court aforesaid, their certain Bill in Chancery against the said Defendants, which is in the words and figures following, to wit:

To the Honourable the Judges of the Fleming Circuit Court in Chancery sitting, humbly complaining, shew unto your Honours your orators Thomas Bodley, James Hughes, and Robert Pogue: That on the 17th day of October, 1783, an entry was made with

the Surveyor of Fayette County, in the names of Henry Crutcher and John Tebbs for 10,000 acres of land, in the words and figures following, to wit:

"Henry Crutcher and John Tebbs enters 10,000 acres of land on Treasury Warrant, No. 18747, &c. as by reference to an attested copy thereof herewith filed will fully appear, that a survey was legally executed and a patent obtained thereon in the names of Robert Rutherford, assignee of Henry Crutcher, and Willoughby Tebbs, heir at law of John Tebbs, deceased, on the day of 1790, and by regular deeds the legal title to the same is now vested in your orators, to attested copies of which entry, survey, patent, and deeds, your orators beg leave to refer, and pray they may be taken as a part of this bill. Your orators charge that the said 10,000 acres entry is special surveyed conformable to entry and agreeable to law, and possesses all the requisites of a good and valid claim. Your orators futher represent and charge, that on the day of 1780, Ambrose Walden made an entry with the proper Surveyor, in the words and figures following: 'Ambrose Walden enters 1333⅓ acres of land, &c. as by reference to an attested copy thereof will more fully and at large appear,' that on the day of 1780, John Walden made an entry with the Surveyor as follows: 'John Walden enters 1666⅔ acres of land, &c. as by reference to an attested copy thereof will fully and at large appear, and having caused the same to be illegally and improperly surveyed, so as to interfere with your orators' claim aforesaid, have fraudulently obtained patents of elder dates than the one under which your orators claim as aforesaid. Your orators charge that the entries of said Walden are vague, uncertain, and ought not to be supported, and that they have been illegally and improperly surveyed, so as to interfere with your orators' special entry aforesaid, in as much, as the entry of Ambrose Walden calls for, and depends upon an entry of a settlement and pre-emption in the name — Jacob Johnson, and the entries made on said settlement and pre-emption in the name of Peter Johnson, heir at law of Jacob Johnson, deceased, call to lay on the *east side* of the Buffaloe road, leading from the *Blue Lick* to Limestone, *nine miles* from the *Lick*, on the *upper* road, when in fact and in truth, there are two Blue Licks, frequently and commonly known and distinguished by the names of the *Upper* and the *Lower Blue Lick*, from both and each of which several Buffaloe roads, extending out towards, and some of them run to, Limestone—which makes said entries vague and uncertain, and John Walden's entry calls for, and depends on Ambrose Walden's aforesaid. Your orators charge that the patent for Ambrose Walden's 1333⅓ acres so fraudulently and illegally obtained, was in the name of Ambrose Walden, who they pray may be made a defendant to this bill. That the said Ambrose Walden has sold and conveyed 200 acres of said tract, and by sundry transfers the title and possession thereof is now in Dale Carter, who they pray may also be made a defendant herein. Your orators further charge, that the patent on John Walden's

survey of 1666⅔ acres was issued in the name of said John Walden, who, as they are informed and believe, hath since departed this life, leaving the said Ambrose Walden and others unknown, who are not inhabitants of this Commonwealth, his heirs and legal representatives; that the said Ambrose, as your orators have been informed, sold and conveyed 200 acres of said tract of land, and by sundry transfers the title and possession of which is now vested in John, Thomas, William, Jeremiah, Rachel, and Lurinda Proctor, infant heirs and representatives of Jeremiah Proctor, deceased, and Lucius Chapin. That a certain Lewis Craig who claimed the locator's part of said survey, has sold and conveyed to Ann Thrailkiled, John Thrailkeld, and Price, part of the said tract of which they are now respectively in possession: all of whom *or* made defendants of this bill with apt words to charge them. But now so it is as may it please your Honours, that the said Ambrose Walden and others combining, &c. well knowing the premises, have refused to convey and relinquish to your orators their elder legal title to the land in controversy, so fraudulently and illegally obtained, and to yield to your orators possession of the premises. To the end, therefore, and in as much as your orators are remediless by the strict rules of the common law, and can only be relieved in equity; that the said defendants Ambrose Walden and the other unknown heirs of John Walden, Dale Carter, the said heirs and representatives of Jeremiah Proctor, deceased, Lucius Chapin, Mrs. Ann Threlkeld, John Threlkeld and Price, may, upon their several corporal oaths, true and perfect answer make to all and singular the premises as fully as if herein repeated and interrogated, that the said defendants may severally exhibit their title papers and set forth their *their* respective claims, t*heir* being a guardian first appointed for the nfant heirs of said Proctor, deceased, that they may be decreed to relinquish and convey to your orators, all their respective rights and claims to the land in controversy, and that your orators may have such other and further relief as they are entitled to in equity. May it please your Honours to grant to your orators the Commonwealth's Writ of Subpœna, &c. &c. &c.

"T. BODLEY, *for Complts.*"

The entry of Henry Crutcher and John Tebbs, referred to and made a part of the foregoing bill, is as follows, to wit:

1783, 17th of October. Henry Crutcher and John Tibbs enters 10,000 acres of land on a treasury warrant, No. 18747, as tenants in common, beginning at a large black ash and a small buckeye marked thus, I T, on the side of a Buffaloe road, leading from the Lower Blue Licks, a N. E course, and about seven miles N. E. by E. from the said Blue Licks, a corner of an entry *of an entry* of 20,000 acres made in the name of John Tebbs, John Clarke, John Sharpe, and David Blanchard, and Alexander M'Lain, running thence with the said Tebbs, &c. line due east 1600 poles, thence

south 1000 poles, thence west 1600 poles, thence north 1000 poles, to the beginning for quantity.

Copy Attest, J. PRICE, S. F. C."

The survey of Robert Rutherford, assignee of Crutcher and Tibbs, referred to in the foregoing bill is not filed.

The following is the patent and deeds, &c. referred to and made part of the foregoing bill, to wit:

"Beverley Randolph, Esq. Governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting: Know ye, that by virtue and in consideration of a land office Treasury warrant number eighteen thousand seven hundred and forty-seven, issued the fourteenth day of August, one thousand seven hundred and eighty-three, there is granted by the said Commonwealth unto Robert Rutherford, assignee of Henry Crutcher, and unto Willoughby Tibbs, heir at law to John Tibbs, deceased, a certain tract or parcel of land containing ten thousand acres, by survey bearing date the fourteenth day of March, one thousand seven hundred and eighty-four, lying and being in the County of Fayette, and bounded as follows, to wit: Beginning at a large black ash and small buckeye marked thus, I. T., standing on the road leading from the Lower Blue Licks to the mouth of Limestone, about eight miles north east by east from the said Licks, running thence due east six hundred poles to a small creek, thence, continuing the same course, three hundred poles to a small creek, thence, continuing the same course, seven hundred poles, in all amount to one thousand six hundred poles and cornering at a buckeye, honey-locust, and black walnut, thence, due south, at four hundred poles crossed a creek, thence, continuing the same course six hundred poles, and cornering at a black walnut, white ash, and hickory, thence, due west, crossing the east fork of Licking at eight hundred poles, thence, continuing the same course, sixty poles, crossed the said fork again, thence, continuing the same course seven hundred and forty poles, in all amounting to one thousand six hundred poles, and cornering in a large sink hole on two red oaks and a honey-locust, thence due north at four hundred and eighty poles, crossed the main branch of the east fork of Licking, continuing the same course at sixty poles, crossed the said fork again continuing the same course at sixty poles, crossed the said fork the third time, amounting to one thousand eight hundred poles to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said Robert Rutherford and Willoughby Tibbs and their heirs for ever.

"In witness whereof the said Beverly Randolph, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser seal of the said Commonwealth to be affixed, at Richmond, on the twenty-sixth day of August, in the year of our Lord one thousand seven hundred and ninety, and of the Commonwealth the fifteenth.

[SEAL.] "BEVERLY RANDOLPH."

Upon which is the following endorsement, to wit:

"Robert Rutherford and Willoughby Tibbs are entitled to the within mentioned tract of land.

"JOHN HARVIA,
"*Re. L. Off.*"

To all to whom these presents shall come, or in any wise concern, we, Robert Rutherford of Berkley County, John Peyton, and Charles Magill of the town of Winchester, in the Commonwealth of Virginia, send greeting. Know ye, that we, reposing especial trust and confidence in the integrity of our friend Buckner Thruston, Esquire, of [L. S.] Lexington, in the Commonwealth of Kentucky, and for other good causes and considerations, us, the said Robert Rutherford, John Peyton, and Charles Magill hereunto moving, have nominated, constituted, and appointed, and by these presents do nominate, constitute and appoint him, the said Buckner Thruston, our true and lawful attorney, for us, and in our name to make, sign, seal, and execute and deliver unto Thomas Bodley, of the said town of Lexington, a good and sufficient deed in fee simple, for all our right, title, interest and estate, in and to a certain tract or parcel of land, situate on the waters of Licking, in Mason County, in the said Commonwealth of Kentucky, containing ten thousand acres, with a special warranty against ourselves and our heirs, without recourse in case the said lands, or any part thereof, should be lost or taken by better claims, which said tract of land was granted by patent from the Commonwealth of Virginia to the said Robert Rutherford, as assignee of Henry Crutcher and Willoughby Tibbs, heir at law of John Tibbs, deceased on the 26th day of August, 1790, particularly described in the said patent, and the one undivided moiety thereof was conveyed to the said John Peyton by the said Willoughby Tibbs, by deed now of record in the Clerk's Office of the Washington District Court, or in some other court of record in the said State of Kentucky, in which moiety, he, the said Charles Magill, by a subsequent agreement, became equally concerned with the said John Peyton, but hath not obtained a deed from him for the same, and we do hereby declare that such conveyance so executed by him, our said attorney, shall be irrevocably binding on ourselves, and ourselves in as full and ample a manner as if we had been personally present, and did the same ourselves.

In witness whereof we have hereunto set our hands and seals this 5th day of October, 1798.

Sealed, and delivered in the presence of

R. RUTHERFORD. [SEAL.]
J. PEYTON. [SEAL.]
CHAS. MAGILL. [SEAL.]

At a superior court continued and held for the district composed of the Counties of Frederick, Berkley, and Shenandoah, at Winchester, on Friday, the 5th day of October, 1798. Present, Robert

White, jr. and Paul Cannington, jr. Esquires, Judges of the General Court. This power of attorney from Robert Rutherford, John Peyton, and Charles Magill, to Buckner Thruston, was acknowledged by the said Robert, John and Charles, and ordered to be certified by the court."

"J. PEYTON, *Clerk.*"

VIRGINIA, *to wit:*

I, Robert White, jr. one of the Judges of the General Court for the Commonwealth aforesaid, and presiding Judge of the district court, now sitting at Winchester, do hereby certify that the above order testifying the execution of the foregoing letter is in due form of law, and that there is no public seal to the said district court, certified under my hand this 9th day of October, 1798, at Winchester."

"ROBERT WHITE, Jr.

STATE OF KENTUCKY, *Lexington District*, ss.

I, Thomas Bodley, Clerk of the Supreme Court for the district aforesaid (being authorized by law to receive the acknowledgment of, and admitting to record it in my office, deeds and other writings) do certify that the within written letter of attorney together with the within written acknowledgment thereof, and order and the within written certificate were produced to me in my office, and are truly recorded therein. Given under my hand this 11th day of February, 1799.

THOS. BODLEY, C. L. D. C.

FLEMING COUNTY, ss.

I, James Crawford, deputy for Joshua Stockton, clerk of the Court for the County aforesaid, certify that this power of attorney, from Robert Rutherford, John Peyton, and Charles Magill, to Buckner Thruston, was this produced before me and John Kercheval, of Mason County, made oath that he was well acquainted with the handwriting of the said Rutherford, Peyton, and Magill, and that he believed the signatures to said power was their hand-writing, and said power of attorney is duly recorded. Given under my hand this 4th of September, 1821."

"JAMES CRAWFORD."

This indenture made this fifteenth day of February, in the year of our Lord one thousand seven hundred and ninety-nine, between Robert Rutherford, of Berkley County, John Peyton, and Charles Magill, of Frederick County, in the State of Virginia, of the one part and Thomas Bodley, James Hughes, Robert Campbell, and Robert Pogue, of the State of Kentucky, of the other part, witnesseth that the said Robert Rutherford, John Peyton, and Charles Magill, for, and in consideration of the sum of one thousand and fifty pounds current money of Kentucky, to them paid, the receipt whereof they do

hereby acknowledge, do by these presents, grant, bargain, sell, alien and confirm unto the said Thomas Bodley, James Hughes, Robert Campbell, and Robert Pogue, their heirs and assigns for ever, all that tract or parcel of land lying and being in the Counties of Mason, and Fleming, in the State of Kentucky, on the waters of Johnson's fork of Licking, and bounded as follows, to wit:

Beginning at a stake where there formerly stood a large black ash, and small buckeye trees, marked IT, on the road leading from the lower blue licks to the mouth of Limestone creek, about eight miles north east by east, from the said licks running thence due east six hundred poles to a small creek, continuing the same course to another small creek, continuing the same course in all, one thousand six hundred poles to a buckeye, honey-locust, and black walnut, thence due south at four hundred poles crossed a creek, continuing the same course in all one thousand poles to a black walnut, white ash, and hickory, thence due west, crossing the east fork of Licking at eight hundred poles, continuing the same course at sixty poles, crossed the said fork again, continuing the same course in all one thousand six hundred poles, to two red oaks and a honey-locust in a sink hole, thence due north at four hundred and eighty poles, crossed the main branch of the east fork of Licking, continuing the same course at sixty poles crossed the said fork again, crossed the said fork the third time at sixty poles, continued the same course in all one thousand poles to the beginning, containing ten thousand acres by survey made in the names of Henry Crutcher and Willoughby Tebbs, heir at law to John Tebbs, deceased, on the 14th day of March, 1784, and patented to Rutherford, assignee of Henry Crutcher, and Willoughby Tebbs, heir at law of John Tebbs, deceased, one half of the said tract was conveyed by the said Willoughby Tebbs, to John Peyton, by deed recorded in the clerk's office of the Washington District Court, and one half of the said moiety transfered by the said Peyton to Charles Magill, by agreement. Together with all and singular the improvements and appurtenances thereunto belonging, or in any wise appertaining. To have and to hold the land hereby conveyed with all and singular the premises unto the said Thomas Bodley, James Hughes, Robert Campbell, and Robert Pogue, their heirs or assigns for ever, and the said Robert Rutherford, John Peyton, and Charles Magill, for themselves, their heirs, executors or administrators, the aforesaid tract of land with the appurtenances against the claim or claims of them, or either of them and their heirs and against all claims of dower or other incumbrance which may arise under them or their heirs, unto the said Thomas Bodley, James Hughes, Robert Campbell and Robert Pogue, their heirs or assigns, do and will warrant and for ever defend by these presents. But it is understood and expressly agreed between the parties that in case the whole or any part of the said land should be lost or taken by elder or better claims, the said Rutherford Peyton and Magill, are not to refund or be accountable for any part of the purchase money, as they only sell the right of themselves and their heirs without any recourse. In witness whereof, the said Robert Rutherford, John

Peyton and Charles Magill, by Buckner Thruston their attorney, in fact duly authorized by power of attorney bearing date the fifth day of October, 1798, and recorded in the clerk's office of the Lexington District Court, have hereunto set their hands and affixed their seals the date first above written.

Executed in the presence of
JAMES BROWN,
LEWIS MARSHALL,
JOHN ARTHUR MACGREGOR.

ROBERT RUTHERFORD. [SEAL.]
JOHN PEYTON. [SEAL.]
CHARLES MAGILL. [SEAL.]

STATE OF KENTUCKY, *Washington District*, ss.

I, John Chambers, Deputy Clerk of the Washington District Court, do certify that this Indenture from Robert Rutherford, John Peyton, and Charles Magill, by Buckner Thruston, their attorney, in fact, to Thomas Bodley, James Hughes, Robert Campbell, and Robert Pogue was, on the 20th day of February, in the year 1799, produced before me, proven by the oaths of Lewis Marshall, a subscribing witness thereto, and was on the 26th day of August, in the year 1799 aforesaid, proven by the oath of James Brown, another subscribing witness thereto, and was this day proven by the affirmation of MacGregor, another subscribing witness thereto, and is truly recorded in the office of the said court. Given under my hand this 13th day of Sept. 1800.

"JOHN CHAMBERS."

This Indenture, made this sixth day of August, in the year of our Lord one thousand eight hundred and four, between Robert Campbell and Rebecca his wife, of Mason County, State of Kentucky, of the one part, and Thomas Bodley, James Hughes, and Robert Pogue of the other part, Whereas the said Robert Campbell, and the parties of the second part, in the year 1798 became joint purchasers from Peyton and Magill of Winchester, and Robert Rutherford of Berkley County, Virginia, of a survey of ten thousand acres of land on Johnson's fork of Licking, in Mason and Fleming Counties, Kentucky, entered in the names of John Tebbs and Henry Crutcher, patented to Rutherford assignee of Henry Crutcher and Willoughby Tibbs, heir at law of John Tibbs, deceased, and the same was conveyed to the said Thomas Bodley, James Hughes, Robert Pogue, and Robert Campbell, by deed dated the day of duly recorded in the clerk's office of the Washington District Court, and whereas the said Robert Campbell had a claim to a pre-emption of 1000 acres of land, entered in the name of William Hays, assignee of David Binny, and patented to the said Campbell, the greater part of which is included within the said ten thousand acre survey; and by an article of agreement between the said parties, dated the 16th day of March, 1801. It is among other things, agreed and stipulated, that the said Campbell shall release and convey to the said Bodley, Hughes and Pogue, all the right, title,

claim, and interest of him, the said Campbell of, in and to all the said ten thousand acres of land, except as to so much thereof as is covered by and included in the patent boundaries of the said Campbell's pre-emption, and that the said Bodley, Hughes and Pogue shall release and convey to the said Campbell all their right, title, claim, and interest, under their said claim of 10,000 acres to all that part of the said Campbell's preemption, which is included within the said ten thousand acre survey, all which will appear by a reference to the said agreement, in which the contract between the parties is fully stated. Now this Indenture witnesseth, that the said Robert Campbell, and Rebecca his wife, for, and in consideration of the premises above recited, and for the further consideration of five shillings current money to them paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released and confirmed, and by these presents do grant, bargain, sell, release, and convey unto the said Thomas Bodley, James Hughes, and Robert Pogue, their heirs or assigns for ever, all the right, title, claim, and interest of the said Robert Campbell, under the purchase and deed aforesaid, in and to the before described ten thousand acres of land, agreeably to the boundaries and descriptions in the patent and deed aforesaid, except as to so much thereof as covers, and is included within the patent boundaries of the said Campbell's preemption as aforesaid, together with all and singular, the premises and appurtenances thereunto belonging, or in any wise appertaining. To have and to hold the land and premises hereby conveyed unto the said Bodley, Hughes and Pogue, their heirs or assigns for ever, and the said Robert Campbell, and Rebecca his wife for themselves, their heirs, &c., the said land and premises unto the said Bodley, Hughes, and Pogue, their heirs or assigns against the claim or claims of the said Robert Campbell, and Rebecca his wife, their heirs, and all persons claiming or to claim by, through or under them do and will warrant and defend by these presents. But is agreed by the parties, and it is the true intent and meaning of this Indenture, that if the whole or any part of said land, should be lost or taken by any better claim, the said Robert Campbell is not bound to refund, nor is he liable or subject to any costs or damages whatsoever, as he only transfers and relinquishes his right to the said land, without any kind of recourse. In Testimony whereof, the said Robert Campbell, and Rebecca his wife, have hereunto set their hands and seals, the day and date first above written.

Signed and acknowledged in presence of } ROBERT CAMPBELL. [SEAL.]
REBECCA CAMPBELL. [SEAL.]

MASON CIRCUIT, SS.

I, Francis Taylor, clerk of the court for the circuit aforesaid, do certify that this Indenture from Robert Campbell, and Rebecca his wife to Thomas Bodley, James Hughes and Robert Pogue was this day produced before me, acknowledged by the said Robert Camp

bell a party thereto, and a copy thereof is duly recorded in my office. Given under my hand the 6th day of August, 1804."

"FR. TAYLOR."

"This Indenture, made this twenty-third day of May, in the year of our Lord one thousand seven hundred and twenty five, between Willoughby Tibbs, of the town of Dumfries, in the County of Prince William, in the Commonwealth of Virginia, and Betsy his wife, of the one part, and John Payton of Winchester, in the County of Frederick, and Commonwealth aforesaid, of the other part, witnesseth, that for, and in consideration of the sum of seven hundred pounds current money of Virginia, to the said Willoughby Tibbs, in hand paid by the said John Payton, at or before the sealing and delivery of these presents, the receipt whereof, he doth hereby acknowledge, and for other good causes and considerations, him hereunto moving, they the said Willoughby Tibbs, and Betsy his wife, have granted, bargained, and sold, and by these presents do grant, bargain and sell unto the said John Peyton and his heirs, all his, the said Willoughby Tebbs, undivided moiety, or half part of two certain tracts or parcels of land, situate on the waters of Licking, in the State of Kentucky, one of which tracts contain three thousand acres, and the other ten thousand acres, as particularly described in two patents granted for the same, by Beverly Randolph, Esquire, then Governor of Virginia, Robert Rutherford, assignee of Henry Crutcher, and to the said Willoughby Tebbs, heir at law of John Tibbs, deceased, which patents bear date respectively, the 26th day of August, 1790, reference thereto being had, may more fully appear, together with all tenements, hereditaments and appurtenances, to the said undivided moiety of the two tracts, or parcels of land above mentioned, and thereby intended to be bargained and sold, free and clear of all incumbrances whatsoever, except the taxes now due thereupon, unto the said John Peyton, his heirs and assigns for ever, to the only proper use and behoof of him, the said John Peyton, his heirs and assigns for ever, and the said Willoughby Tibbs, for himself, and his heirs, the land hereby intended to be bargained and sold unto the said Peyton, his heirs and assigns, against them, the said Willoughby Tibbs, and Betsy his wife, and their heirs, and all and every other person or persons claiming by, from, or under him or them shall warrant, and for ever defend. In witness whereof, the said Willoughby Tibbs, and Betsy his wife, have hereunto set their hands and seals, the day and year *and year* first before written.

Sealed and delivered in presence of } WILL'Y. TIBBS. [SEAL.]
BETSY TIBBS. [SEAL.]

Prince William County, to wit:

Personally appeared Willoughby Tibbs, the person named in the foregoing indenture as the grantor thereof, before us, two of the

Justices of the Peace in and for the County aforesaid, and signed, sealed and acknowledged the same indenture to be his act and deed, for the purposes therein mentioned. Given under our hands this 23d day of May, 1795.

ALEXR. LITHGON.
WM. BARNES.

COMMONWEALTH OF VIRGINIA, *Prince William County, ss.*

[SEAL.] I, John Williams, Clerk of the County aforesaid, do hereby certify that Alexander Lethgon, and William Barnes, Gentlemen who granted the above certificate, are Justices of the Peace in and for the County aforesaid, and that due faith and credit ought to be given to the said certificate, as well in courts of justice, as thereout. In testimony whereof, I have hereunto set my hand, and affixed the seal of my said County, this 23d day of May, 1795, and in the 19th year of the Commonwealth.

"JOHN WILLIAMS."

STATE OF KENTUCKY, *Washington District, ss.*

I, Francis Taylor, Clerk of the Washington District Court, being authorized by law to receive and admit to record in my office, deeds and other writings, do certify that this indenture from W'y. Tibbs and Betsy his wife, to John Peyton, was on the 12th day of August, 1796, produced before me, and is, together with the certificates thereto annexed, duly recorded in my office.

FRANCIS TAYLOR, *C. W. D. C.*

("A Copy") *Attest,* MARSHALL KEY,
Clerk of Mason County Court.

The Entry of Ambrose Walden, referred to in the foregoing bill, is not filed.

The Entry of John Walden, referred to and made part of the foregoing bill, is as follows, to wit: May 22d, 1780. John Walden enters 1666⅔ acres upon a treasury warrant, joining the above entry on the south and south-east, to include three cabbins built by Simon Canton, running east and south-east, for quantity.

A Copy, *Test,* O. BETT, *D. for*
JOHN M. FOSTER, *R. L. O.*

Upon the foregoing bill, process issued in words and figures follows to wit: The Commonwealth of Kentucky, to the Sheriff of Fleming County, greeting: We command you to summon Ambrose Walden, Lucius Chappin, John Proctor, Thomas Proctor, William Proctor, Jeremiah Proctor, Rachel Proctor and Lorenda Proctor, heirs and representatives of Jeremiah Proctor, deceased, Ann Threlkeld, John Threlkeld, Dale Carter and John Price, to appear before the Judges of the Fleming Circuit Court, at the Court-house in Fleming County, on the first day of the next June term to answer

to a bill in Chancery, exhibited against them by Thomas Bodley, James Hughes and Robert Pogue, and this they shall in no wise omit, under the penalty of £100, and have then there this writ. Witness Thomas Dougherty, Clerk of our said Court, at the Court-house aforesaid, the 18th day of May, 1815, and 23d year of the Commonwealth.

THOMAS DOUGHERTY, (C.)

Upon which subpœna, the Sheriff made the following return, to wit: "Executed May the 25th, on all except Price, Walden and Carter; Walden and Carter not in my bailiwick. Price is dead.

JAMES SAUNDERS, *D. S. for*
WM. S. SHACKLEFORD, *Sh'ff. F. C.*

The Commonwealth of Kentucky to the Sheriff of Mason County, greeting: We command you to summon Ambrose Walden, Lucius Chapin, John Proctor, Thomas Proctor, William Proctor, Jeremiah Proctor, Rachel Proctor, and Lorenda Proctor, heirs and representatives of Jeremiah Proctor, deceased, and Anne Threlkeld, John Threlkeld, Dale Carter and Price, to appear before the Judges of the Fleming Circuit Court, at the Court-house in Fleming County, on the first day of the next June term, to answer a bill in Chancery, exhibited against them by Thomas Bodley, James Hughes and Robert Pogue, and this they shall in no wise omit, under the penalty of £100, and have then there this writ. Witness Thomas Dougherty, Clerk of our said Court, at the Court-house aforesaid, the 18th day of May, 1815, and 23d year of the Commonwealth.

THOMAS DOUGHERTY, *C.*

Upon which subpœna, the Sheriff made the following memorandum and return, to wit:

"Came to hand, May the 25th, 1815."

WM. G. BULLOCK, *D. for*
JOS. KEY, Jr. *S. M. Cty.*

"Executed on Dale Carter, May the 31st, 1815; the other defendants not found."

WM. G. BULLOCK, *D'y for*
JOS. KEY, Jr. *S. M. Cty.*

The Commonwealth of Kentucky, to the Sheriff of Fleming County, greeting: We again command you to summon Ambrose Walden and Dale Carter, to appear before the Judges of the Fleming Circuit Court, at the Court-house in Fleming County, on the first day of the next March term, to answer a bill in Chancery, exhibited against them by Thomas Bodley, James Hughes and Robert Pogue, and this they shall in no wise omit, under the penalty of £100, each, and have then there this writ. Witness Thomas Dougherty, Clerk of our said Court, at the Court-house aforesaid, the 30th day of November, 1815, and 24th year of the Commonwealth.

THOMAS DOUGHERTY, *C.*

Upon which the Sheriff made the following return, to wit:
"Not found."

JAMES SAUNDERS, *D. S. for*
W. S. SHACKLEFORD, *S. F. C.*

At a Court continued and held for the Fleming Circuit, at the Court-house thereof, in the town of Flemingsburg, on Friday, the 9th day of June, 1815, "The defendant, Ambrose Walden, not having entered his appearance herein, agreeably to law and the rules of this Court, and it appearing to the satisfaction of the Court that he is not an inhabitant of this Commonwealth; on the motion of the complainants by their counsel. It is ordered that the said defendant appear here on the first day of the next September term of this Court, and answer the complainants' bill, or the same will be taken as confessed, *against* him, and that a copy of this order be published in some authorized newspaper of this State, for eight weeks in succession, according to law.

On the motion of the complainants; it is ordered that the surveyor of Fleming County go upon the lands in controversy between the parties on the day of next, if fair, if not, the next fair day, and survey and lay off the same as either party may require, having due regard therein, to the interest and evidence of both parties, state all matters of fact specially, and return four fair plats and reports thereof to the Clerk's Office, before the day of hearing, and the Sheriff of Fleming County is directed to attend to said surveyor upon request, and remove force, if any shall be offered, and the cause is continued until the next Circuit Court.

At a Court continued and held as aforesaid, on Friday, the 8th day of September, 1815. "On the motion of the complainants by their counsel: it is ordered that this suit be discontinued, as to the defendant, John Price. That Mary Thomas be appointed a guardian to defend this suit for John Proctor, Thomas Proctor, William Proctor, Jeremiah Proctor, Rachel Proctor, and Lorenda Proctor, infant, heirs and representatives of Jeremiah Proctor, deceased; and that the surveyor of Fleming County go upon the lands, in controversy between the parties, on the day of next if fair, if not, the next fair day, and survey and lay off the same, as either party may require, having due regard therein to the interest and evidence of both parties, state all matters of fact specially, and return four fair plats and reports thereof, to the Clerk's Office, before the day of hearing, and the Sheriff of Fleming County is directed to attend the said surveyor (upon request,) and remove force, if any should be offered, and the cause is continued until the next Circuit Court.

The joint answer of the defendants, John and Anne Threlkeld, and that of the heirs and representatives of Jeremiah Proctor, deceased, by their guardian, were severally produced, and ordered to be filed, which are as follows, to wit: "The answer of Anne Threlkeld and John Threlkeld, to a bill in Chancery exhibited against them and others in the Fleming Circuit Court by Thomas Bodley

and James Hughes and Robert Pogue. These defendants now and at all future times, saving and reserving every benefit of exception to the errors, &c. in the complainants' bill, say for answer: That they claim two hundred and twenty-two acres of the entry of Walden, made for acres of land, being part of the locator's part, to wit: part of that which Simon Kenton, for locating, was entitled to by agreement, bearing date the first of May, 1780, and signed and sealed by the said Simon Kenton, and the said Ambrose Walden, which, on the 24th of April, 1787, the said Kenton assigned to John Craig and Robert Johnston, which being assigned by the said Robert Johnston on the 18th of May, 1791, to the trustees of said John Craig, was by them transferred to Lewis Craig, on the 28th of December, 1793, the original of which being on file in the office of the United States Circuit Court for Kentucky, in a suit between said Walden and Craig, with the aforesaid various assignments, is consequently out of the power of these defendants, but a copy of which they beg leave to refer to, and will in due time file as evidence in this cause. These defendants claim, by purchase of said Craig, and have deeds made therefor; which will at least vest in them the equitable title of Craig to the land, which deeds they will also introduce as evidence at the trial. The defendant Anne claims at this time only one hundred acres, having disposed of a part of her original purchase of Craig, to her co-defendant John, who claims at this time 122 acres. These defendants not being competent judges, refer the goodness of Walden's claim, under which they hold, to this Honourable Court. These defendants, and those under whom they claim, have been in possession of their land more than twenty years before this suit was brought against them, and they plead their long continued possession as a bar to the complainants' right of recovery in this suit, as they are informed and believe the said complainants are not excepted by the statute, but are barred by the adverse possession of twenty years, of these defendants, who have made large and valuable improvements on the land. These defendants know nothing of the complainants' claim, except from information, and they require full proof of its equity, and specialty, and notoriety. These defendants deny all fraud with which they are charged, and pray to be dismissed hence, with the benefit of Walden's elder patent, their long and uninterrupted possession of twenty years, and their costs herein expended.

REID, *Atto.*

Fleming County, ss.

Anne Threlkeld and John Threlkeld came before the subscriber, a justice of the peace for said County, and made oath that the statements made of their own knowledge in the foregoing answer, are true, and that such as are made from information, they believe to be true. Given under my hand the day of September, 1815.

"N. FOSTER, *J. P. F. Ct.*"

" The answer of John Proctor, Thomas Proctor, William Proctor, Jeremiah Proctor, Rachel Proctor, and Lorenda Proctor, children and heirs of Jeremiah Proctor, deceased, by Mary Thomas, their mother and guardian appointed for that purpose, to a bill in Chancery exhibited against them and others, in the Fleming Circuit Court, by Bodley, and Hughes and Robt. Pogue. These defendants, by their said guardian, for answer say, that they hold and claim title to nearly one hundred and fifty acres of Walden's claim, but whether the same is superior to the complainants' claim or not, defendants do not know, being infants of tender years, and they therefore put the complainants upon full proof of their claim and title. These defendants further say, that they, and those under whom they claim, have held and occupied the said 150 acres of land for at least twenty years before the complainants brought the suit, to which this is an answer, as they are informed, believe and expect to prove to this Honourable Court, and they plead such length of possession, as a bar to the recovery set up in the bill. If it should be required of them, they will in due time present to your Honours, as evidence in the cause, their title papers, shewing the various transfers from Walden down to their father. These defendants being infants of tender years, deny all fraud, &c. and pray this Honourable Court to save and protect their interests, and then to dismiss them with their costs herein expended."

REID, *Atto. for Def'ts.*

Fleming County, ss.

Mary Thomas, Guardian for the infants named in the foregoing answer, this day came before the subscriber, a justice of the peace of Fleming County, and made oath, that so much as is stated therein of her own knowledge, is true, and that so much as is stated from information, she believes to be true.

8th September, 1815.

N. FOSTER.

At a Court continued and held as aforesaid, on Friday, the 8th day of March, 1816. " Ordered, that this cause be continued, until the next Circuit Court."

At a Court continued and held as aforesaid, on Thursday, the 6th day of June, 1816; " Ordered, that this cause be continued until the next Circuit Court."

At a Court held as aforesaid, on Monday, the 2d day of September, 1816; " Ordered, that this cause be continued until the next Circuit Court."

At a Court continued and held as aforesaid, on Monday, the 10th day of March, 1817; " Ordered, that this cause be continued until the next Circuit Court."

At a Court continued and held as aforesaid, on Wednesday, the 11th day of June, 1817,

" It is agreed that either party may file in this suit, to be used as

evidence, copies of any depositions which have been taken or used as evidence in any of the following suits: Bodley and Hughes against McKee in the General Court, same against Shannon, &c. same against Craig and others, and Clark against Gale's heirs in the Bath Circuit Court. Bodley, &c. against Taylor in the Federal Court. George Stockton, under Howard and Overton's claim, against Lee and others in the Nicholas Circuit Court, or copies out of any other suit, whether either of the parties were named or not in such suit, and such copies shall have the same effect as if the depositions had been regularly taken in this suit, and it is also agreed that either party may take the depositions of any other witness they may wish to have examined in this suit, giving notice to the adverse party of the time and place of taking the same, subject to all legal exceptions as to competency or credibility. And is further agreed the survey made out by Z. Eastin in the suit Bodley and Hughes against Shannon &c., and the survey made out by Hugh Fulton in the suit Bodley and others against Craig, &c., in the Bath Circuit Court, and the survey in the suit Bodley, &c. against Taylor in the Federal Court, may be used in this suit and either party may be at liberty to have such amendments and additions made to said surveys by the surveyor of Fleming County, as they may direct, without giving notice to the adverse party. But neither party in taking copies of depositions from other causes, shall exceed the amount of twenty dollars for such copies, and if he does so shall not recover such overplus of his adversary.—June 11th, 1817.

Thos. Bodley for Complainants: Walker Reid, attorney, for defendants: and the cause is continued until the next Circuit Court. "And the complainants in this suit agrees that the defendants may take depositions to prove the length of time they have been in possession of the premises in controversy without notice, and that such depositions may be used as evidence in this cause, subject to any exception as to competency or credibility." At a court continued and held as aforesaid, on Wednesday, the 3d day of September, 1817. "Ordered that this cause be continued until the next Circuit Court." At a Court continued and held as aforesaid, on Wednesday, the 4th day of March, 1818. "Ordered, that this cause be continued until the next Circuit Court." At a Court continued and held as aforesaid, on Thursday, the 11th day of June, 1818.

"This day came the parties by their attornies, and this suit is discontinued as to the heirs of Jeremiah Proctor, deceased, Ann Threlkeld and John Threlkeld and ordered that they recover of the complainants their cost herein expended; and the cause is continued as to the other defendants." At a court continued and held as aforesaid, on Friday the 12th day of September, 1818. "Ordered, that this cause be continued until the next Circuit Court. And on motion of the complainants, leave is given them to amend their bill herein which was done and said amendment filed." And is as follows, to wit:

Your Orator, Thomas Bodley, respectfully shows that since the filing the original bill in this suit by your orator and his co-com-

plainants, James Hughes and Robert Pogue, the said James Hughes by deed bearing date the 11th day of October, 1815, and now recorded in the clerk's office of the Mason County Court transferred and conveyed to your orators all the right, title and interest of him, the said Hughes to the land in controversy, in this suit, as well as all other lands held jointly or in common between your orator and the said James Hughes to a copy of which deed your orators refers, and makes the same a part of this bill. Your orators shows further that on the 18th day of the present month, (August, 1818,) the said James Hughes departed this life: Your orator Thomas Bodley therefore prays that this suit may abate as to the said James Hughes and stand in the name of your orator and his co-complainant Robert Pogue, only against such defendants, and that your Honour grant the relief prayed for in the original bill by your orator and said Hughes, to your orator Thomas only, and grant such other and further relief as to equity may belong, and your orator will ever pray, &c. "J. A. PAXTON, *For Complts.*"

The deed from James Hughes and wife to Thomas Bodley referred to, and made a part of the foregoing amended bill, is in the words and figures following, to wit:

This indenture made the 11th day of October, in the year of our Lord, 1815, between James Hughes and Mary his wife of Franklin County, Kentucky, of the one part, and Thomas Bodley of Lexington, Fayette County, of the other part, Witnesseth, That the said James Hughes for and in consideration of about the sum of twenty-seven thousand dollars received by him, as set forth in an article of agreement between the parties, bearing date the 17th day of July, 1815, and in order to carry said agreement into effect hath granted, bargained and sold, and by these presents, doth bargain, sell, and convey unto the said Thomas Bodley, his heirs and assigns for ever, all the right, title, claim, and interest of him the said James Hughes, his heirs, &c. in and to the following tracts of land, heretofore held in manner hereafter mentioned, to wit: so much of one undivided moiety as has not been conveyed by him by virtue of any sales made by either of them in and to the following tracts of land, to wit: sixteen thousand acres surveyed on part of an entry of 20,000 acres made in the names of John Tebbs and company on the 31st of July, 1783, lying on the waters of Johnson's fork, and the north fork of Licking, in Mason and Fleming Counties, patented to said Bodley the day of and one half thereof conveyed by him to said Hughes, also 3,000 acres entered and surveyed in the name of David Blanchard adjoining the above mentioned 20,000 acre tract at the south-east corner patented to said Bodley and Hughes the 14th day of February, 1799; also one other tract of 10,000 acres entered and surveyed in the name of Robert Clarke near the upper Blue Licks patented to said Bodley and Hughes also one other tract of 6052 acres in Mason County adjoining Shannon's settlements and pre-emption entered in the name of John Marshall, patented to Thomas Marshall, and with certain reservations con-

tained in the deed, conveyed by Lewis Marshall to said Bodley and Hughes, all which tracts have been heretofore jointly held in partnership between said Bodley and Hughes; also one undivided third part of 10,000 acres of land, entered in the name of John Tibbs and Henry Crutcher, patented to Willoughby Tibbs and Robert Rutherford, and by sundry conveyances transferred to the said Bodley, Hughes, and Robert Pogue. Also all his said Hughes' interest in, and to the purchase made by said Bodley, Hughs and Pogue, from John Taylor of Caroline County, Virginia, of 3000 acres of land on Johnson's fork of Licking, which said last mentioned tracts have been jointly held in partnership between the said Bodley, Hughes and Pogue, the said several tracts herein before mentioned being particularly bounded and described in the several original surveys and patents which are hereby referred to, and the said James Hughes, for himself, his heirs, &c., by these presents doth give up and relinquish, transfer and convey to the said Thomas Bodley, his heirs, executors, administrators, or assigns, all right, title, claim and benefit to be derived from any and all of the contracts heretofore made by them, or any person for them, respecting the said lands, or any part thereof, together with the appurtenances thereunto belonging, or in any wise appertaining. To have and to hold the land hereby conveyed with the appurtenances unto the said Thomas Bodley, his heirs or assigns for ever, and the said James Hughes, for himself, his heirs, &c. the before described interest in the before described tracts of land, against the claim or claims of all persons claiming by through or under him, but against no other claim whatever unto the said Thomas Bodley, his heirs and assigns, doth and will warrant and defend*ant* by these presents, but it is understood, and is the true intent and meaning of this indenture, that in case the whole or any part of said land should be lost or taken by any other claim, the said Hughes, his heirs, &c., are not to be liable to refund any part of the consideration, or be subject to any costs or damages, as the said Hughes only sells his right without any recourse or liability in any event whatever. In testimony whereof the said James Hughes and Mary his wife, have hereunto set their hands and seals the day and date first above written."

J. HUGHES. [SEAL.]
Executed in presence of MARY HUGHES. [SEAL.]

Memo. It is further understood that if any partnership land, sold by the said Hughes, previous to the 7th day of July, 1815, is unconveyed, the said Hughes does not warrant against such claimant, but a title is to be made by the said Bodley.

FRANKLIN COUNTY, SS.

I, Willis A. Lee, Clerk of the County Court of the County aforesaid, do certify, that this Deed from James Hughes and Mary his wife, to Thomas Bodley, was produced to me on the 11th day of October, 1815, and was acknowledged by the said James and Mary

to be their act and deed for the purposes therein mentioned, and she the said Mary Hughes, being by me examined separate and apart from her husband, as the law directs, and freely and voluntarily relinquished her right of dower in and to the premises, without the threats or persuasions of her said husband, and was willing the same might be recorded as such. Whereupon the same is certified to the Clerk of the County Court for the County of Mason. In Testimony whereof, I have hereunto set my hand as Clerk, the date above written."

"WILLIS A. LEE, *Clerk.*"

STATE OF KENTUCKY, *Mason County.* ss.

I, Marshall Key, Clerk of the County Court for said County, certify, that this Deed of Conveyance from James Hughes and Mary his wife to Thomas Bodley, was this day produced in my Office, with the acknowledgment before the Clerk of the County Court of Franklin County, and the same is duly recorded.

Given under my hand, this 15th of November, 1815.

MARSHALL KEY.

FLEMING COUNTY CLERK'S OFFICE, *November 7th*, 1818.

I, James Crawford, Deputy Clerk of the Court for said County, certify, that this Deed from James Hughes and wife to Thomas Bodley, was this day produced in my Office, and by virtue of the certificate of the Clerk of Franklin County Court, is duly recorded.

"JAMES CRAWFORD."

A true copy from Record."

Teste JAS. CRAWFORD,
Depy. Clerk of the Fleming County Court.

"At a Court continued and held, as aforesaid, on Thursday the eleventh day of March, 1819, Ordered that this cause be continued until the next Circuit Court."

"At a Court continued and held, as aforesaid, on Saturday the 12th day of June, 1819. The Complainants in this cause moved the Court to set aside the discontinuance awarded in this cause at the last June Term of this Court. And the said motion is continued until the next Court."

"At a Court continued and held, as aforesaid, on Saturday the 11th day of September, 1819. This day came, the Complainant, by *his* Attorney and on *his* motion, leave is given him to amend his Bill filed herein, which amendment was accordingly made and filed, and is as follows, to wit: 'Your Orators beg*s* leave as an amendment to their original Bill to state, that since the filing of the original Bill, they have discovered that the heirs of Jeremiah Proctor, to wit: John, Thomas, William, Jeremiah, Rachel and Lurinda Proctor, who were made Defendants to the original Bill and

charge to hold title under the Patent in the name of Walden and John Threlkeld and Ann Threlkeld, who were also charged by the original Bill, as holding title, ☞ against whom the original Bill was discontinued at September, 1818, and against whom it is now prayed to be revived and the papers and proceedings in the original suit made a part hereof ☜ (all of whom are now prayed to be made Defendants to this amendment, as well as the original Bill), do not in fact hold title but possession only, and that the legal title to the land aforesaid, patented in the name of John Walden is now vested in his heirs whose names are unknown to your Orators, who are prayed to be made Defendants to this Bill and the original, and the same relief granted to your Orators against them as is prayed for in the original Bill against the other Defendants, and that by your final Decree you will compell the said unknown heirs to convey their elder legal title to your Orators. Your Orators prays the writ of subpœna directed to said heirs of Jeremiah Proctor and John and Ann Threlkeld, who holds, and keep your Orators out of possession and by your final Decree you will compell said unknown heirs to convey to your Orators their elder legal title, and the Defendants aforesaid who are in possession, to surrender possession to your Orators, and he, as in duty bound, will ever pray, &c.

☞ Amendment, marked thus ☞ made by interlining with leave of the Court, June 16th, 1824.

Upon the foregoing amended Bill, process issued in the words and figures following, to wit:

The Commonwealth of Kentucky, to the Sheriff of Fleming County, Greeting:

We command you to summon the unknown heirs of John Walden, deceased, and John Proctor, Rachel Proctor, Thomas Proctor, William Proctor, Jeremiah Proctor, and Lorenda Proctor, children and heirs of Jeremiah Proctor, deceased, and John Threlkeld and Ann Threlkeld, to appear before the Judge of the Fleming Circuit Court, at the Court House, in the town of Flemingsburg, on the first day of the next March Term, to answer the original and amended Bills, filed in the said Court against them and others by Thomas Bodley and Robert Pogue, and this they shall not omit under the penalty of £100 each, and have then there this writ.

Witness Leakin D. Stockton, Clerk of said Court this 15th day of September, 1819, in 28th year of the Commonwealth.

L. D. STOCKTON.

Upon which the Sheriff made the following return, to wit: Executed on John Threlkeld on the 11th Feby., also on Rachel Proctor and Ann Threlkeld on same day, on William Proctor, John Proctor, Lorenda Proctor and Jeremiah Proctor on the 17th Fe-

bruary, 1820. John Walden's heirs and Thomas Proctor not found.

L. D. Stockton, *D. S.*, for JAMES PARKS, *S. F. C.*

And it appearing to the satisfaction of the Court, that the Defendants, the unknown heirs of John Walden, deceased, are not inhabitants of this Commonwealth, and they having failed to enter their appearance herein agreeably to law and the rules of this Court. It is ordered, that unless they do appear here on or before the first day of the next March Term of this Court and file their answer, plea, or demurrer to the Complainant's Bill, that the same shall be taken for confessed against them, and that a copy of this order be inserted in some duly authorized newspaper of Kentucky for two months successively according to law. And the cause is continued until the next Circuit Court."

At a Court continued and held as aforesaid, on Tuesday the 7th day of March, 1820. "This day came the Defendants, Ann Threlkeld and John Threlkeld and filed their joint answer to the Complainant's Bill herein." Which is as follows, to wit: The answer of Ann Threlkeld and John Threlkeld to a Bill and amended Bill in Chancery, exhibited against them in the Fleming Circuit Court by Thomas Bodley, &c. These Defendants jointly and severally saving and reserving every exception to the Complainant's said Bills for answer thereto, say that they refer to their former answer in this cause and to the proceedings therein, for the purpose of shewing the manner in which they derive title, and also to shew that the discontinuance in said suit was wholly voluntary on the part of the Complainants, and entered to prevent a decree being entered dismissing the Bill as to these Defendants after years of procrastination produced by the Complainants' own inattention, and without any fraud or concealment of the truth on the part of these Defendants, who had used every exertion to bring the suit to a speedy trial and by their Attorney admitted the use of plats and depositions from other causes which the Complainants had—nor had he even filed a title paper—These Defendants, therefore, pray, that the voluntary act of the Complainants in discontinuing the cause at June Term 1818 may stand unimpaired, and that your Honour may not allow the amended Bill to have even the effect of a new suit—But if this Honourable Court should deem it consistent with the principles and practice of Courts of Chancery to allow the Complainants thus to proceed, then your Defendants, in addition to their former plea of twenty years' possession under title before suit brought, plead that they have had peaceable and uninterrupted possession for more than seven years before the filing of the said amended Bill, which was under title fairly and equitably and they trust legally derived from the Patentee, and which according to the Statutes in such cases made and provided they are advised, is a complete bar to the Complainants' claim. These Defendants will hereafter exhibit and prove their title to this Honourable Court.

And denying all fraud and unlawful combination, they pray to be hence dismissed with their costs, &c.

REID, *Att.*

John and Ann Threlkeld made oath before the subscriber, a Justice of the Peace of Fleming County, that the facts stated in the foregoing answer of their own knowledge, are true, and that such as they state from information they believe to be true, this 6th March, 1820.

"HENRY BRUCE."

At a Court continued and held as aforesaid, on Thursday the 9th day of March, 1820.

"This day came the defendants, the heirs of Jeremiah Proctor, deceased, and filed their joint answer to the complainant's bill, which is as follows, to wit: 'The answer of John Proctor, William Proctor, Jeremiah Proctor, Thomas Proctor, Rachel Proctor, and Lorenda Proctor, infant heirs of Jeremiah Proctor, deceased, by Mary Thomas, their mother and guardian appointed to defend the cause in Chancery, in Fleming, brought by Thomas Bodley, &c. saving and reserving every right of exception to the many errors and misstatements contained in the original and amended bill, the said defendants say for answer. That on the 10th of March, 1804, one Andrew Kinkead, conveyed by deed to their father Jeremiah Proctor, deceased, one hundred and fifty acres of land by metes and bounds, subject to certain deductions as in said deed mentioned of sundry lots in the town of *Vernon*, which deed is duly recorded in the county of Fleming, and a copy thereof made part of this answer. That the said Kincaid had previously procured a deed for the same of Ambrose Walden, devisee of John Walden, deceased, bearing date, December 17th, 1796, and duly recorded in the county of Mason, a copy of which is made part hereof, and which 150 acres is part of John Walden's claim of 1666⅔ acres, the entry for which they are advised to say is good, and the patent in strict conformity to entry, both of which they will file. They state that the discontinuance of the cause entered at the June term, 1818, at your Honourable Court, was voluntary on the part of the complainants, and made to prevent a decree in favour of these defendants, after waiting an unusual length of time for the complainants to prepare for trial. These defendants therefore plead that in addition to the facts stated in their former answer, which is referred to and made part of this, that they have had seven years quiet and peaceable possession of said lands, before the filing of the complainants amendment, which ought at most only to be considered as a new suit, and they plead the statutes in such cases made and provided against the said complainants claim, provided your Honour allows it to have the effect of a new suit, averring that their title was complete, and even if not so at law, that it was and is such as would enable them to have coerced the legal title from John Walden the patentee. They deny any agreement or mistake made by them-

selves or Attorney, who produced the said discontinuance, and all fraud and unlawful combination, and pray that the said discontinuance may stand unaltered, and that they may be dismissed hence with their costs in this behalf expended.'

REID, *for Defendants.*

FLEMING COUNTY, SS.

Mary Thomas, Guardian, to defend for the infants within named made oath that the facts stated within so far as they came within her own knowledge are true, and so far as they are stated from information they believe it to be true."

"HENRY BRUCE."

The entry of John Walden referred to in the foregoing answer is copied on page 23.

The deed from Kinkead to Proctor referred to and made a part to the foregoing answer is as follows, to wit: "This Indenture made the tenth day of March, one thousand eight hundred and four, between Andrew Kinkead and Ann his wife, of Fleming County and State of Kentucky, of the one part, and Jeremiah Proctor of the County and State aforesaid, of the other part witnesseth, that the said Andrew and Ann his wife, for and in consideration of the sum of five hundred pounds current — of the State aforesaid, to them in hand paid by the said Jeremiah, before the sealing and delivery of these presents the receipt of which is hereby acknowledged, have granted, bargained and sold, and by these presents doth grant, bargain and sell, alien and confirm unto the said Jeremiah, his heirs and assigns for ever, a certain tract or parcel of land, situate and being on the waters of Johnson's fork of Licking, in the aforesaid county of Fleming, being part of a tract of 1666⅔ acres patented to John Walden, and being that part of said tract conveyed to the said Andrew by Ambrose Walden, devisee of the said John Walden by deed, bearing date the 17th day of December, 1796, and now remaining of record in the office of the Clerk of the Mason County Court, in Liber C. Folio 523, and bounded as follows, to wit: Beginning at a large white oak, John Walden's old corner, and running thence north 71 degrees, west 200 poles to a large black oak, sugar tree and blue ash, thence south 19 degrees, west 120 poles to a box-elder and red elm, thence South 71 degrees, east 200 poles to a stake in said Walden's old line, thence north 19 degrees, east 120 poles to the beginning, containing by estimation 150 acres, subject nevertheless to the following deductions, viz. Mr. Chapin's lot whereon he now lives containing about seven acres, also the lot known as that of Dr. Samuel McAden though owned by the said Chapin, John Sherry's lot, Jonathan Rose's lot, James Shanklin's and one other lot, originally sold to William Ricketts, supposed to be now owned by a blind man near the Lower Blue Licks, the several lots reserved as aforesaid in this transfer being within the lines of the said 150 acres, and so reserved

from their having been transferred to the several claimants by the trustees of the town of Vernon, of which they constitute a part. Together with all and singular the privileges and appurtenances whatsoever to the hereby granted premises, belonging, or in any wise appertaining, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand of them the said Andrew and Ann his wife, of, in and to the same. To have and to hold the land above described (subject to the deduction aforesaid) with the appurtenances, unto him the said Jeremiah, his heirs and assigns, to his and their only proper use, benefit and behoof for ever. And the said Andrew and Ann his wife, for themselves, their heirs, the land and premises above described (subject to the deduction aforesaid,) with the appurtenances unto him the said Jeremiah, his heirs, executors, administrators and assigns, against the title, claim, or demand of all and every person or persons whatsoever, shall and will warrant and for ever defend by these presents. In testimony whereof the said Andrew and Ann his wife have hereunto set their hands and seals, the day and year first above written.

A. KINKEAD, [SEAL.]
ANN KINKEAD. [SEAL.]

FLEMING COUNTY, SS.

We, the subscribers, two of the Commonwealth's Justices of the Peace, for said county, do certify that Ann Kinkead, wife of the within named Andrew Kinkead, this day personally appeared before us, and voluntarily and without the *cer*tion of her said husband, relinquished her dower and right of dower in the premises within mentioned to Jeremiah Proctor, his heirs and assigns, and desired that the same might be recorded.

Given under our hands and seals the 10th day of March, 1804.

N. FOSTER. L. S.
R. BARNES, jr. L. S.

FLEMING COUNTY, SS.

I, Thomas Dougherty, Clerk of the Fleming Circuit Court, being authorised by law to receive and admit to record in my office, deeds and other writings, do certify that the foregoing Indenture of bargain and sale from Andrew Kinkead and Ann his wife, to Jeremiah Proctor, was this day produced before me, acknowledged by the said Andrew and Ann his wife, and is, (together with the certificate of N. Foster and R. Barnes, jr. thereto annexed and this certificate) duly recorded in my office.

Given under my hand the 10th day of March, 1804.

Teste, THOMAS DOUGHERTY."
A Copy. Teste, JOSHUA STOCKTON, *Clerk.*

The deed from Walden to Kinkead referred to and made a part of the foregoing answer, is as follows, to wit: "This Indenture,

made this 17th day of December, in the year of our Lord God one thousand seven hundred and ninety-six, between Ambrose Walden, of the county of Fauquier, and state of Virginia, of the one part, and Andrew Kinkead, of the county of Mason, and state of Kentucky, of the other part, witnesseth, that the said Ambrose Walden, for value received, hath bargained and sold unto the said Andrew Kinkead, and to his heirs or assigns for ever, one certain tract or parcel of land, containing one hundred and fifty acres, said land being the property of John Walden, deceased, of Caroline county, in the state of Virginia; the power of conveying said land is invested in said Ambrose, son of John Walden, by his father's last will and testament; being part of a tract, sixteen hundred and sixty-six acres and two-thirds of an acre, situate in county Mason, on the waters of Johnson's Fork of Licking, by patent dated the 21st day of November, 1786, and bounded as follows, to wit: beginning at a large white oak, John Walden's old corner, and north 71 degrees, west 200 poles, to a large black oak, sugar-tree, and black ash, thence south 19 degrees, west 120 poles, to a box-elder and red elm, and south 71 degrees, east 200 poles, to a stake, said Walden's old line, north 19 degrees, east 120 poles, to the beginning. To have and to hold the said tract of land, with all and singular the appurtenances thereunto belonging, to the said Andrew Kinkead, to his only proper use and behoof; and the said Ambrose Walden, for himself, his heirs, executors and administrators, the said tract or parcel of land unto the said Andrew Kinkead, his heirs or assigns, shall and will warrant and for ever defend against the claim of him the said Ambrose Walden, or any person or persons whatsoever. In witness whereof, the said Ambrose Walden hath hereunto set his hand and seal, the day and year first above written.

"Signed, sealed, and delivered in presence of
J. P. CAMPBELL,
JOHN POAGE, sr.
JOHN POAGE,
SAML. McKEE, jun'r."

"AMBROSE WALDEN. [SEAL.]

MASON COUNTY, ss. *December Court*, 1796.

This Indenture of bargain and sale, from Ambrose Walden to Andrew Kinkead, was acknowledged by the said Ambrose, a party thereto, and ordered to be recorded.

Teste,
A Copy. Attest,

T. MARSHALL, JR. *C. M. C.*
MARSHALL KEY,
Clk. Mason County Court.

The patent of John Walden referred to in the foregoing answer is as follows, to wit:

Patrick Henry, Esq. Governor of the commonwealth of Virginia, to all to whom these presents shall come, greeting: Know ye, that by virtue and in consideration of part of a land office treasury war-

rant, No. 2706, issued the 18th day of February, 1780, there is granted by the said commonwealth unto John Walden, a certain tract or parcel of land, containing sixteen hundred sixty-six and two-third acres, by survey, bearing date the 27th day of December, 1785, lying and being in the county of Fayette, on the waters of Johnson's Fork, adjoining Ambrose Walden's survey of thirteen hundred thirty-three acres, on the south and east sides, and bounded as followeth, to wit:

Beginning on the south west corner of said Walden's survey, at a hickory, white oak, red oak, and thence S. 68, E. 450 poles, to an ash, Spanish oak, buckeye and mulberry, at the south-east corner of said Walden, and with a line of the same, N. 22, E. 164 poles, to two sugar-trees, and two white oaks in said Walden's line, thence S. 68, E. 284 poles to a locust, white oak, and coffee trees, thence S. 22, W. 464 poles to two small Spanish oaks and cherry, thence N. 68, W. 734 poles to a hickory in a bend of Johnson's Fork, thence N. 22, E. 300 poles to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land with its appurtenances, to the said John Walden, and his heirs for ever. In witness whereof, the said Patrick Henry, Esq. Governor of the commonwealth of Virginia, hath hereunto set his name, and caused the lesser seal of the said commonwealth to be affixed, at Richmond, on the first day of November, in the year of our Lord one thousand seven hundred and eighty-six, and of the commonwealth the eleventh.

P. HENRY.

A Copy. Teste, O. BELT,
D. for John M. Foster, R. L. O.

At a Court continued and held as aforesaid, on Wednesday the 15th day of March, 1820. "The motion of the complainant made at the June term of this Court, 1819, to reinstate this cause, this day came on to be heard, whereupon it was ordered, that the said motion be overruled. And ordered, that the defendants recover of the complainant their costs about this motion expended." "And at a Court continued and held as aforesaid, on Thursday, the sixteenth day of March, 1820, Ordered, that this cause be continued until the next Circuit Court."

At a Court continued and held as aforesaid, on Wednesday, the 14th day of June, 1820. "This day came the parties, by their attornies, and filed herein their written admission of facts, and the cause is continued until the next term of this Court."

The admission of facts filed by the foregoing order cannot be found.

At a Court continued and held as aforesaid, on Saturday, the 9th day of September, 1820. "This day came the parties, by their attornies, and the amended answer of John and Ann Threlkeld, and Jeremiah Proctor's heirs is filed herein, by consent, without oath, and the cause is continued until the next Circuit Court."

Which amended answers are as follows, to wit:

"The defendants, John and Ann Threlkeld, in this cause, (by and with the consent of the complainants,) jointly amend their several answers herein, by stating that they and those under whom they claim have been in the actual and uninterrupted possession of the land now claimed by them under the patent for 1666⅔ acres, granted to John Walden, (which is filed in the suit,) for seven years and upwards, before the commencement of this suit, to wit, for twenty years and upwards before the complainants filed their original bill herein against them, and that their possession was under the title of the said Walden, and was, as was also the *the* title under which they claimed, adverse and hostile to the title of the complainants, and the said defendants plead, insist, and rely upon the several statutes now in force in this commonwealth limiting the right of entry into, and of suit to recover land so as aforesaid held and possessed, under title adverse and hostile, as a complete bar to complainant's right of suit, or to have any decree in their favour, wherefore, as well as because their said claim and title is superior in equity, they pray to be hence dismissed with their costs, &c."

"The defendants, the heirs of Jeremiah Proctor, by their guardian, Mary Thomas, amends their answer to the bill of the complainants as follows:

"They state that they obtain title to acres of land under a patent granted to John Walden for 1666⅔ acres, whos devisee conveyed the said acres to Andrew Kinkead, who conveyed the same to the ancestor of these defendants, from whom it descended to them, and they exhibit copies of the said patent, and deeds, as a part of their answer, and they expressly charge that they, and those under whom they claim, have been in the actual and uninterrupted possession of the land so as aforesaid claimed by them, for seven years and upwards, to wit, for the term of twenty years and upwards next before the commencement of the complainants' suit, and that such their possession and title was, and is, hostile to the claim and title of the complainants, and they plead, insist, and rely upon the several statutes in force in this commonwealth limiting the right of entry into, and of action, suit, &c. to recover land so as aforesaid claimed and possessed under title, as a complete bar to the complainants' right to have or maintain their bill, and to the rendition of any decree in their favour; and these defendants further answering, protest against the attempt of the complainants to attach the bill to which this is an answer to the bill formerly filed against them by way of amendment, because they say that the said former bill was fully, fairly, and finally disposed of, and cannot, as they contend, be considered as attached to, or connected with the present suit; and these defendants pray to be hence dismissed with their costs, &c."

"CHAMBERS, P. D."

For the patent and Deeds referred to and made part of the foregoing answer, see page 49 for Deed Kinkead to Proctor, page 52 for Deed from Walden to Kinkead, and page 54 for Walden's patent. At a court continued and held as aforesaid, on Friday the 9th

day of March, 1821, "Ordered that this cause be continued until the next Circuit Court." At a court continued and held as aforesaid, on Friday the 8th day of June, 1821, "Ordered that this cause be continued until the next Term." At a court continued and held as aforesaid, on Friday the 14th day of September, 1821, "Ordered that this cause be continued until the next Term." At a court continued and held as aforesaid, on the day of March, 1822. This cause was continued until the next Term. At a court continued and held as aforesaid, on Thursday the 6th day of June, 1822. Ordered that this cause be continued until the next Term. At a court continued and held as aforesaid, on Wednesday the 4th day of September, 1822, "This day came the parties by their Attornies and upon motion of the defendants. It is ordered that the surveyor of Fleming County do go upon the lands in controversy between the parties, on the day of next, if fair, if not then on the next fair day, and then and there survey and lay off the same as either party may require, having due regard to all Deeds and other evidence to him produced, report all matters of fact specially, and return four fair platts and reports thereof to the Clerk's Office before the day of trial, and the Sheriff is directed upon request to attend said surveyor, and remove force if any should be offered; and the cause is continued until the next Term at the costs of the defendants." And upon motion of the complainant he has leave to amend his bill herein, which amendment was thereupon produced and is ordered to be filed," and is as follows to wit: "An amendment to the bill of Thomas Bodley and Robert Pogue, to their bill in chancery against Walden, Proctor's heirs, &c. in the Fleming Circuit Court. Your Orators state, that since the commencement of this suit, Lurinda Proctor one of the defendants, hath intermarried with Levi Thomas, who is prayed to be made a defendant herein, and charged as in the original bill with the same prayer, &c., and your Orators further charge that the said defendant Levi Thomas, is committing waste on the premises, by cutting and destroying timber, &c., they therefore pray an injunction against the defendants to stay waste &c.," upon the foregoing amended bill, process issued in the words and figures following, to wit: "The Commonwealth of Kentucky to the Sheriff of Fleming County, Greeting; We command you to summon to Levi Thomas to appear before the Judge of the Fleming Circuit — at the Court House in the town of Flemingsburg, on the first day of the next March Term, to answer a bill and amended bill in chancery exhibited against him &c., by Thomas Bodley and Robert Pogue, and this he shall in no wise omit under the penalty of £100, and have then there this writ, witness Leakin D. Stockton Clerk of said court at the Court House aforesaid, the 17th day of October, 1822, and in the 31st year of the Commonwealth.

"L. D. STOCKTON."

Upon which the Sheriff made the following return, to wit: "Executed November 2d, 1822.

GEO. STOCKTON, *D. S.* for
WM. P. FLEMING, *S. F. C.*

At a court continued and held as aforesaid, on Wednesday the 5th day of March, 1823, "The defendant, Levi Thomas, this day produced in open court, his answer, and swore to the same, which is o dered to be filed;" and is as follows, to wit:

"The answer of Levi Thomas to a bill in chancery, exhibited against him and others in the Fleming Circuit Court by Thomas Bodley and Robert Pogue. This defendant saving all right of exception to the bill of the complainants for answer to so much thereof as concerns him, saith that it is true that since the pendency of this suit he has intermarried with Lurinda, one of the daughters and heirs at law of Jeremiah Proctor, deceased, and he insists and relies upon the answer and defence heretofore made by his wife, by her guardian in this suit, and not knowing of his own knowledge, any thing of the validity of the claim of the complainants or of their derivation of title, he prays that they may be put upon the complete proof of it in every respect. Further answering, this defendant denies that he is committing waste upon the land in controversy in this suit, without the improvement of that portion of it which has fallen to his wife, be so called. This defendant denies all fraud and combination, &c., and relying upon the title and possession of the ancestor of his wife and of his legal representatives since his death, as heretofore stated and relied upon by the said heirs. He prays to be hence dismissed with his costs, &c.

CHAMBERS P. D."

"FLEMING CIRCUIT, ss.

The foregoing answer was produced in open court, and sworn to by said Thomas.

Att. L. D. STOCKTON, *C. F. C. C.*

At a court continued and held as aforesaid, on Thursday the 6th day of March, 1823, "upon motion of the defendants, leave is given them to file an attested copy of the last Will and Testament of John Walden, deceased, as an exhibit in this cause, which was accordingly done in open court, and upon their further motion, they have leave to withdraw their platts and reports of survey returned and filed in this cause for the purpose of amending the same, and the cause is continued until the next Term."

At a court continued and held as aforesaid on Wednesday the 4th day of June, 1823. The parties produced an agreement, which by consent is ordered to be filed. "And is as follows, to wit. "It is agreed that the land in controversy, as woodland is now worth ten dollars per acre, and in its present improved state it is worth and valued at twenty dollars per acre—but this admission is to have no effect upon any future controversy about the value of the improvements or of the land, except to shew the value of it in any question of jurisdiction that may arise in the progress of the case."

"June 4th, 1823." And upon motion of the defendants, Ann Threlkeld, John Threlkeld, and the heirs of Jeremiah Proctor, deceased:

leave is given them to withdraw their title papers filed in this cause which was immediately done. And also that the surveyor have leave to withdraw the platts and reports of survey returned and filed in this cause, for the purpose of amending the same as either party may require."

At a court continued and held as aforesaid on Wednesday the 4th day of September, 1823.

It is agreed that the papers in this cause shall be submitted to the court upon the written agreement of the counsel on both sides, to enable the court to give a decree at the next term.

The defendant John Threlkeld, is permitted to take depositions relative to his possession and title without notice, before the first day of February next. The complainants are permitted to file with the papers, copies of Ambrose Walden and John Walden's warrants, with the endorsements therein, before the said first day of February next. And by consent the complainants are permitted to withdraw their original title papers on leaving copies attested by the clerk of this court, which are to have the same effect in this cause as the originals, and the cause is continued until the next term."

At a court continued and held as aforesaid, on Friday the 5th day of September, 1823. "By consent of the parties by their attornies leave is given, the defendants to lay down and represent their several claims upon the connected platt already filed herein." At a court continued and held as aforesaid, on Thursday the 11th day of March, 1824. "Ordered that this cause be continued until the next Circuit Court."

At a court continued and held as aforesaid, on Wednesday the 16th day of June, 1824. "On motion of the complainants, Bodley and Pogue, leave is given them to file their amended bill, suggesting the death of James Hughes, and that his interest had been conveyed to the complainant, Bodley (it appearing that the amendment heretofore filed hath been mislaid) ordered that this suit abate as to the complainant, Hughes, and stand in the names of the complainants, Bodley and Pogue, and leave is also given the complainants to amend their amended bill filed herein, 11th September, 1819, by interlineations stating the discontinuance as to part of the defendants, and refering to the papers and proceedings in the original suit and making them part of the amended bill, which amendments were made and filed. And the cause is continued until the next Circuit Court." Which amended bill suggesting the death of James Hughes, &c., is as follows, to wit. "Your Orator, Thomas Bodley, respectfully shews that since filing the original bill in this suit by your orator and his co-complainants: the complainant, James Hughes, by deed bearing date the 11th day of October, 1815, and duly recorded in the clerk's office of the Mason and Fleming County Courts, transfered and conveyed to your orator, Bodley, all the right title and interest of him the said Hughes, to the land in controversy in this suit as well as all other lands held jointly or in common between them, to a copy of which deed your orator refers and makes it a part of this bill your orators, Bodley and Pogue further shew that on the 18th day of August, 1818, the said Hughes departed this

life, your orators therefore, pray that this suit be abated as to the complainant Hughes, and that it stand in the names of your orators, Bodley and Pogue, only Bodley claiming two-thirds, and Pogue one-third of the land in controversy—and that your Honour will grant the relief prayed for in the original and amended bill, herein which they refer to and make a part hereof, together with all the exhibits and depositions filed in the cause, and pray for such further and other relief, as they may be entitled to in equity, &c."

BODLEY, *For Compl'ts.*

For the deed from Hughes to Bodley referred to, and made a part of the foregoing amended bill, see back on page 35.

At a court continued and held as aforesaid, on Saturday the 11th day of September, 1824.

"This cause coming on this day to be heard upon the bill, amended bill, answers, depositions and exhibits, and the parties being heard by their counsel, the court took time to consider thereof until the next term. The complainant, Bodley, produced his affidavit and a statement of his counsel which is ordered to be filed, and are as follows, to wit. "The complainant, Bodley, states on oath, that he was taken by surprise by the objection made to reading the deed, from Rutherford, Peyton and Magill, to Bodley, Hughes, Campbell and Pogue, because the same had not been recorded in the time required by law; which objection was made by the counsel of the defendants for the first time after the argument was opened by plaintiff's counsel, and the deeds had been read. This affiant states that he had no knowledge that the objection would be made or did exist, because the title papers had been acted on before in this court and sustained. He believes he can prove the deed by a subscribing witness or can prove the hand-writing of Buckner Thruston, who signed the names of Rutherford, Peyton and Magill, as their attorney, in fact, if he is permitted to do so, without delay.

"THO'S. BODLEY."

FLEMING CIRCUIT, ss. *September Term*, 1824.

The foregoing was sworn to in open court."

Att. L. D. STOCKTON, *C.*

Adam Beatty states in his character as counsel for the complainants, that he was only engaged in this cause at the last term of this court, and is the only counsel for the complainants since that time engaged in the cause for complainants. That several of the original title papers were filed in the cause, at the present term the copies had been filed before but not read by him, and that he had not even time to examine the whole of the papers before the cause came on for hearing, and in particular did not examine the manner in which the deed spoken of in Bodley's affidavit was authenticated, which was one of those filed at the present term, and just before the cause was commenced, but from the inquiries he made of said Bodley, he

did not expect there was any difficulty as to the recording of said deed, nor was he apprised of the objection, until the case had been opened by himself, and replied to by one of the counsel on the other side, and in part by the second counsel. He further states, that even after the case was opened, by commencing the reading of the papers, the complainants permitted the defendants to take a deposition without notice, and to read the same as evidence in the cause.

But he is now informed by said Bodley, that he gave his consent under these circumstances, on yesterday to take said deposition the undersigned asks that the court will take the case under advisement till the next term, and in the mean time give special leave to the complainant to take depositions to prove the execution of the said deed by the attorney in fact Thruston, with an understanding that the case may be finally disposed of then or continued if the defendants wish to take rebutting depositions."

ADAM BEATTY, *Counsel for Complainants.*

And on motion of the complainants, leave is given them to take depositions for the purpose of proving the execution of the deed from Rutherford, Peyton and Magill, by their attorney in fact, Buckner Thruston, to Bodley, Pogue, Campbell, and Hughes, but for no other purpose; and the complainants have leave to withdraw said deed, for the purpose of taking the said proof, and the defendants are to be at liberty to take any rebutting evidence in relation to the execution of said deed, and also evidence to prove the execution of any of their title papers, or for any other purpose they may choose. And the defendants tendered to the court a bill of exceptions, which was signed, and sealed, and ordered to be filed and made a part of the record herein, which is as follows, to wit: "Be it remembered, that this cause this day came on to be heard, and after the bill and amendments thereto, and answers of the defendants were read, the counsel for the complainants were proceeding to read the papers, evidencing their title to the land in controversy, when the counsel for the defendants observed they had objections to the reading of some of those papers, but if the complainants choose, they would go on and read the title papers on both sides, mutually reserving the right to except, and urge the exception in the argument of the cause in chief, to any of the deeds or other title papers offered by the adverse party, which being exceeded to, the papers in the cause were all read, and the complainants' counsel opened the cause in argument, and in the course of his argument, objected to the following deed, as legal evidence in the cause to wit:

Mason County, to wit:

We, the commissioners appointed by the Worshipful Court of Mason, aforesaid, for the purpose of dividing lands held in partnership between citizens of this commonwealth, and now residents, and being called on to divide a tract of land, containing one thousand,

six hundred, sixty-six and two-thirds acres, by survey, and patented in the name of John Walden, between him, the said John Walden, and Lewis Craig, assignee of Craig and Johnson, who was assignee of Simon Kenton, the locator of the said tract, two-thirds of which said tract is the property of the said Walden, and the other third, the property of the said Lewis Craig, assignee as aforesaid, proceeded on this day to divide the lands in the said proportion, that is to say, one-third to the said Craig, and the other remaining two-thirds to the said John Walden, as follows, to wit: Beginning at Ambrose Walden's south-east corner, at a mulberry, Spanish oak, buckeye, and ash, thence south seventy-six degrees, east, three hundred and thirty-three poles, to a white oak, and two sugar trees in John Walden's line, thence north, twenty-two degrees, east, forty-four poles, to two box-elders, and elm in Mickey — line, thence with said Mickey's line west, ninety poles to Mickey's corner, a red oak, hickory, and ash, thence with said line north, one hundred and forty-four poles, to an ash and ironwood in John Walden's line, thence with said line north, sixty-eight degrees, west one hundred and ninety poles to two sugar trees and two white — said Walden's corner, in Ambrose Walden's line, thence with said line south, twenty-two degrees, west, one hundred and eighty poles to the beginning, containing one hundred and eighty-five acres, for the said Lewis Craig, and also divided as follows, to wit: Beginning at two white oaks and red oak in Ambrose Walden's line, one hundred and twelve poles from said Ambrose Walden south-westerly corner, then south, twenty-two degrees west, two hundred and forty poles, to a white oak and two beeches in Mosby's line, thence with said line south, sixty-three degrees, east, two hundred and sixteen poles, to a sugar tree, ash and white oak, thence north, thirty-three and a half, east, two hundred and ten poles, crossing Johnson's fork to two sugar trees and white walnut, thence north, fifty-two poles, to two sugar trees, thence north, twenty-two degrees, east eighty poles, to a hickory on the flat fork of Johnson, in Ambrose Walden's line, thence north, sixty-one and a half, west, two hundred and thirty-six poles to the beginning, containing three hundred and seventy acres, to the said Lewis Craig, the two tracts of land as above described, as his equal third in quantity and quality. To have and to hold the said *said* quantity of five hundred and fifty-five acres to him, the said Lewis Craig, his heirs and assigns for ever, free and clear from the let, molestation, and hindrance of him, the said John Walden, his heirs and assigns for ever, and to hold to him, the said Lewis Craig, his heirs, and in severally, and no longer subject to the claim of him, the said Walden, also divided the tract of land as follows, to wit: Beginning at Ambrose Walden's south-west corner, and said John Walden's corner, called for in his patent, a hickory, white oak and red oak, thence with Ambrose Walden's line, S. sixty-one and a-half east, one hundred twelve poles, to two white oaks and red oak corner, to Lewis Craig, thence with his line, S. twenty-two, west, three hundred and forty poles, to two beeches and white oak, in Mosby's line, thence with his line north, sixty-

three, west, one hundred and twelve poles, to a hickory, said John Walden's south-west corner, thence north, twenty-two, east, three hundred and forty-two poles, to the beginning, containing one hundred and eighty-five acres, for the said John Walden also divided the said tract of land, as follows, to wit: Beginning at Ambrose Walden's south-east corner, and corner to Lewis Craig, an ash, Spanish oak, buckeye, and mulberry, thence south, seventy-six, east, three hundred and thirty-three poles, to a white oak, and two sugar trees, corner to said Craig, thence south, twenty-two degrees, west, three hundred and eighty poles, crossing Johnson's fork to two Spanish oaks and cherry tree, said John Walden's south-east corner by patent, thence north, sixty-three degrees, west, five hundred and ten poles, to a sugar tree, ash and white oak, corner to said Craig, in Mosby's line, thence north, thirty-three and a half, east, twenty-one poles, to two sugar trees, and white walnut, thence north, fifty-two poles, to two sugar trees, thence north, twenty-two, east, eighty poles, to a hickory on the flat fork in Ambrose Walden's line, thence to the beginning, containing nine hundred and twenty-five acres, to him, the said John Walden, and his heirs, &c. for ever, and in severalty, and free and clear from the claim of him, the said Lewis Craig, as assignee, *and assignee*, &c. and his heirs and assigns for ever, and we, the said commissioners, do certify and declare the residue of the said survey in the name of John Walden, is interfered with by a claim in the name of Daniel Mickey, and therefore not divided, but is on that account left in tenancy, in common between the said John Walden, and the said Lewis Craig, and subject to a future division, as the event of the said interference may justify. In witness whereof, we, the said commissioners, have hereunto set our hands, and affixed our seals, this 14th day of February, 1794.

Signed, sealed and delivered before } DAVID MORRIS. [SEAL.] D. V. PAYNE. [SEAL.]

At a Court held for Mason County, the 24th of April, 1797, this division of land between John Walden and Lewis Craig, was returned, and ordered to be recorded.

(A Copy) *Test,* THOMAS MARSHALL, Jr. *C. M. C.*

And amongst other causes of objection*ed* urged that the deed was not recorded in time after its execution, to make it evidence as a record deed. And the defendant's counsel in reply, in the course of their argument in chief, objected to the legality as evidence of the deed purporting to be from Willoughby Tibbs to John Peyton, to wit, (see back, on page 20, for deed Tibbs to Peyton,) because it was not recorded in time to make it evidence as a recorded deed, —and to the deed purporting upon its face to be the deed of Rutherford, Peyton, and Magill, by Buckner Thruston, their attorney in fact to Bodley, Hughes, Pogue, and Campbell, to wit, (see back, on page 12, for deed from Rutherford, Peyton, and Magill,

by Thruston to Bodley, Hughes, Pogue, and Campbell,) because it was not signed by the attorney in fact as such, was not recorded in time to make it evidence as a recorded deed, and was not in conformity to or in pursuance of the power under which it purports to be made. The complainant's counsel then replied to the argument of the defendant's counsel in chief, and the court intimated an intention to take time to consider of the case, and after some time the complainants filed the following affidavit and statement of counsel, to wit, (see back, on pages 66 and 67, for affidavit and statement of counsel,) and prayed the court to continue the cause for the purpose of giving them time to procure evidence of the execution of the last mentioned deed, to which continuance and giving time the defendants objected, urging that they had been twice sued, and a most unreasonable time detained in court, and that the same objection had been taken to their evidence of title which they made to the complainants, at least so far as respected the recording in time. But the court overruled the objection and gave the time asked for, and continued the cause for that purpose. To which opinion — the court excepted and prayed the court to sign this their exception which is done.

W. P. ROPER. [SEAL.]

And the cause is continued until the next Circuit Court.

At a Court continued and held as aforesaid on Thursday the 17th day of March, 1825. "It appearing to the satisfaction of this court that the orders of publication against Ambrose Walden and the unknown heirs of John Walden, have been duly published, and the said Ambrose Walden and the unknown heirs of John Walden having failed to enter their appearance, according to the rules of this court, or to answer the complainant's bill. It is now ordered and decreed that the bill as to them be taken for confessed, so far as relates to all the land in the survey of John Walden of 1666⅔ acres, except the part claimed by the defendants John Threlkeld, Ann Threlkeld, and the heirs of Jeremiah Proctor, deceased, and of the survey of 1333⅓ acres in the name of Ambrose Walden, except 150 acres conveyed to Dale Carter. And thereupon the said cause came on to a final hearing upon the order aforesaid, taking the bill for confessed, and upon the bill, answers of the other defendants, exhibits, and depositions, and the cause having been fully heard, and the court having considered thereof, do now decree and order that the said Ambrose Walden do on or before the first day of June next, release and convey to the complainants the whole of the tract of land, containing, by survey as aforesaid, 1333⅓ acres, except 150 acres sold and conveyed by Ambrose Walden, and which is now in the possession of Dale Carter, who was heretofore a defendant in this cause, but as to whom the bill has *here*fore been dismissed, and in case the said Walden shall fail or refuse to make said conveyance, then James Crawford is hereby appointed commissioner to release and convey the tract of land aforesaid, except as aforesaid, to the said complainants. And the said James Crawford is also ap-

pointed a commissioner to convey for and on behalf of the unknown heirs of John Walden, the whole of the tract of 1666⅔ acres, according to the bounds of the survey, except so much thereof as is in the possession of the defendants John Threlkeld and Ann Threlkeld, and the heirs of Jeremiah Proctor, deceased, and the said commissioner is directed to make report to the next court. And the court being of opinion that the said John Threlkeld, Ann Threlkeld, and the heirs of Jeremiah Proctor, deceased, are protected by the length of their possession prior to the institution of this suit, as to them, it is ordered that the bill of the complainants be dismissed, and that they recover of the complainants their costs by them in this behalf expended. And the parties are hence dismissed without day. And thereupon the complainants pray an appeal to the Court of Appeals from so much of the decree as dismisses the bill, as to John and Ann Threlkeld and Jeremiah Proctor's heirs, which is granted them upon their entering into bond with Joseph C. Belt, their security in the penalty of three hundred dollars in the clerk's office within thirty days;" which was executed accordingly and is as follows, to wit:

"Know all men by these presents, that we, Thomas Bodley, Robert Pogue, and Joseph C. Belt, are held and firmly bound unto John Threlkeld, Ann Threlkeld, John Proctor, Thomas Proctor, William Proctor, Jeremiah Proctor, Rachel Proctor, and Levi Thomas and *Lorina*, his wife, late *Lorina Thomas*, heirs of Jeremiah Proctor, deceased, in the sum of three hundred dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, &c. jointly and severally firmly by these presents sealed and dated this 17th day of March, 1825. The condition of the above obligation is such, that whereas the said Thomas Bodley and Robert Pogue commenced a suit in chancery in the Fleming Circuit Court, against the said John Threlkeld, Ann Threlkeld, and the heirs of Jeremiah Proctor, deceased, and at the present March term of said court, a decree was rendered therein against the said Bodley and Pogue, from said decree said Bodley and Pogue prayed, and obtained an appeal to the Court of Appeals, upon entering into bond in the penalty aforesaid with said Joseph C. Belt, their security conditioned according to law. Now if the said Bodley and Pogue, or either of them, shall well and truly prosecute the said appeal, and pay all damages and costs which may accrue to said John Threlkeld and others in case said decree shall be affirmed, then this obligation to be void, else to remain in full force and virtue."

Att.
L. D. STOCKTON.

THOS. BODLEY. [SEAL.]
ROBERT POGUE. [SEAL.]
JOS. C. BELT. [SEAL.]

The exhibits and depositions filed and used as evidence upon the trial of this cause are as follows, to wit:

"As Editor of the Union, an authorized newspaper printed in Washington, Kentucky, I certify that the annexed order of the

Fleming Circuit Court (viz.) Bodley and others against Walden and others, was published in said paper eight weeks in succession, commencing on the 30th day of June and ending on the 18th day of August, 1815.

"DAVID V. RANNELLS."

The annexed order referred to in the foregoing certificate is an order publication made at June Term, 1815, (see page 26 for the order of publication,)

"As Editor of the Union, an authorized newspaper, printed in Washington, Kentucky, I certify that the annexed order of the Fleming Circuit Court was published in said newspaper for nine weeks in succession, commencing 16th September, 1819.

"DAVID V. RANNELLS."

The annexed order referred to in the foregoing certificate is an order of publication made at September Term, 1819, (see page 44, for order of publication.)

"In the name of God amen. I, John Walden, of the County of Caroline, being in health, do make, constitute and appoint this to be my last will and testament. 1. I give and devise unto my wife Sally, a piece of land to be taken out of the tract whereon I now live, beginning above Thomas Cramptons, where Dixon's line crosses bottle swamp, running thence along Dixon's line, until it strikes the path leading from my house to Benjamin Mundays, thence along that path to the public road, until it comes to the mouth of the lane leading to my house, thence along that lane, until it gets past a corn-field lying northerly from the lane, thence leaving the lane and turning towards bottle swamps, so as to include that field, and to run one hundred yards eastwardly below its fence, until it strikes a small branch which heads in that field, thence down that branch to the main bottle swamp, thence up the swamp to the beginning; upon which said land the office is to be removed and fitted up, or as good a house built for her use at the expense of my estate, and the discretion of my executors, to her my said wife for life, with a power of giving the same in fee, either by deed, will, or appointment, to or among any child or grand child, children or grand children of mine, proceeding from my first marriage; I also give to my said wife the three slaves, Ben, Hannah and Lewis, four cows with calf, or four cows and calves, as she chooses, her choice of all my horses, four head of sheep, such as she may choose, a sow and pigs, half the fowls, her choice of a bed and furniture, two bed quilts such as she may choose, twenty-five pounds' worth of such articles of the estate as she may choose at the appraised value, and one year's provision of corn, fodder, meat and wheat, according to the discretion of my executors, all in absolute property; I also give to my said wife a negro girl, Charlotte, daughter — Jenny, for life, with a power of disping of her similar to her power over the land, unless she shall have a child by me, in which case, I invest her with a power of giving the slave Charlotte and her increase to or among

any child or grand child, children or grand children of mine, the fruit of my present marriage. But if my wife fails to make such disposition, then the said land, or the said Charlotte, with her increase, or both of — undisposed of according to her respective powers, shall after my wife's death, go as the residue of my estate of their respective kinds, is herein after disposed of, which devises and bequests are made to my said wife, in lieu of dower, and as a satisfaction for every claim she might by law have made upon my estate. But if any of the negroes given to my said wife, should be recovered from her by law, my estate is to make good to her the value of them, her or them so lost. 2. I have made sundry advances to most of my children, of which I have made out an account, excluding trifling articles, and upon which I have charged some interest, in order to do justice among them, but I have not charged full interest, nor continued it beyond the present year, since it opened unequally in favour of two youngest children. Having thus estimated, upon equitable principles, in order to enable myself to do justice among my children. I have charged Ambrose with Molon and one bed and — *and* furniture advanced him amounting with interest to £74.50. John with Betty, and one bed and furniture with interest £66.5. William with Peter, and one bed and furniture, and interest £68.15. Thomas with Joe, and interest £44. Lucy with Lydia, and one bed and furniture, and interest £80. Nancy with Frank and Phillis, and one bed and furniture, and interest £62.10. Sally with £50 cash, a bed and furniture *n*ed and her husband, bond for 1000 lbs. of tobacco (which bond I hereby give him) and interest £190.5. Rachel with Judy, a bed and furniture, and interest £66.5. Joanna with one hundred acres of land. Isbell a bed and furniture, and interest £190.1 and Betsy with Kitt, a bed and furniture, and interest £57.10. To my daughter Polly I have made no such advances, averaging these sums by eleven each part is £81.16 which sum is exceeded in the advances to my daughter Sally to the amount of £108.9 and to my daughter Joanna to the amount of £108.5, which respective sums are to be paid out of the shares of my estate hereafter given to the children of my said daughter Sally, and Joanna, in the following proportions, in order that the advances to each may be made equal. To my son Ambrose the sum of £7.11. To John's children £15.11. To the trustees of the daughter of William, £13.1. To Thomas £37.16. To Lucy's trustee £1.16. To Nancy's trustees £19.6. To Rachel's trustees £15.11. To Betsy £24.6, and to Polly's trustees £81.16— 3. I give to my daughter Polly a negro girl, named Franky, upon the same terms, upon which I shall presently give her a share of the residue of her estate. This negro I give her over and above a child's part. 4. Out of my patented lands in the Western country, I give four hundred acres each, to my two sons, John and Thomas, and one hundred and thirty-three acres to my daughter Polly, to them and their heirs respectively. I also give four hundred acres of the same lands to the daughter of my son William, and her heirs, if she should attain the age of twenty-one years, or should have a

living child, but if she dies before she arrives to the age of twenty-one years, and without a child living at the time of her death, I give the land to my sons, and their heirs, equally to be divided. If those lands should not measure to the exact amount, a surplus is to be divided among the same persons in the above proportions, and on the same terms, and a loss is to be deducted proportionably also. My son Ambrose has had his share of Western lands already, but as he for my account, engaged a person to locate this land, for a portion thereof, which portion I have reserved in this devise, I give the residue of my Western lands so reserved, to my said son Ambrose, and his heirs, for the sole purpose of enabling him to comply with that engagement, and not for a benefit to himself. 4. All the rest and residue of my estate, I direct to be sold by my executors on twelve months, to the amount of which sales are to be added my debts and chattels of every kind, including in the former a debt due to me by my son in law, George Walden, for monies lent to him, and a bond due me from the estate of my son William, which bond is to be allotted as a part of his daughter's share, and this aggregate is to be divided in the following manner. The product of the sale of the land whereon I live, is to be divided into ten equal parts, three of which, I devise to Ambrose, Thomas, and Betsy, each one, absolutely, one other to such of the children of my son John, as shall live to the age of twenty-one years, or to have a child, absolutely, equally to be divided among them, one other part to my son in law, George Walden, in trust, for the use of my daughter Nancy Puller, during her life, and after her death, to be by him conveyed to such person or persons as she shall by writing, under her hand appoint, and in default thereof, for the use of my other residuary legatees of land money, one other part to my grand-son, John Harris, in trust for the use of his mother Lucy Bowcock, to apply the profits or interests to her sole and separate use during her life, and after her death equally to be divided among her children, or their representatives, according to the rule of the act of distribution, one other part to the daughter of my daughter Sally Gayle, absolutely equally to be divided among them, one other part to my sons in law John Puller and George Walden, in trust for my daughter Rachel Monday, to apply the interests or profits to her sole and separate use, during her life, and after her death equally to be divided among her children, or their representatives absolutely, according to the rule of the act of distribution, one other part to the children of my daughter Joanna, absolutely, equally to be divided among them, and the remaining part to my said two sons in law, in trust, to apply the profits or interest for the use of my daughter Polly, during her life, and after her death to go according to the rule of the act of distributions, and as to the money produced by the sale of the residue of my estate, and by my debts after debts paid, I direct it to be divided into eleven equal parts, ten parts of which, I bequeath to the same persons respectively, upon the same terms, and for the same uses, as the ten parts of the land money, one before devised, and the remaining eleventh part, I bequeath to my said two sons in law, in

trust, for the use of my sons Williams daughter to pay the same to her, with its profits or interest, upon her coming of age, or having a living child, but if neither of these events should happen, then in trust to go in equal portions with, and according to the terms of my other residuary estate in ten equal parts. 5. But before the residuary shares given to the daughter of my daughter Sally, and to the children of my daughter Joanna are paid, the surplus of the advancement before stated, are to be out by my executors, and applied to equalise all the advancements as before stated, which said sums so paid, are to go in trust, or absolutely with the respective shares of my residuary estate, and to be subject to the same terms and conditions. 6. Any trustee or trustees may purchase or not, of my estate, for the use of the trust, as he or they may conceive to be most advisable, and my executors may assign my bonds due to my estate, or for sales thereof, in discharge of my several devises and bequests. 7. If I should have any child or children hereafter to be born, my will is that such child or children shall come in for an equal share of all my property (the Kentucky or Western lands, and the slave Franky given to Polly excepted) with any of my children now living, upon the principles of this my will, even including the surplus of the advancements aforesaid, which in that case, will be somewhat increased as the slaves will be lessened. 8. Lastly, I appoint Colo. Edmund Pendleton, Jr., John Pendleton, Jr., and John Taylor, executors of this my will. Executed this 29th day of August, 1793.

JOHN WALDEN. [SEAL.]

Signed, sealed and published by the said John Walden, as and for his last will and testament, in our presence and by his request, and in his presence we have subscribed our names as witnesses thereto, the 29th day of August, 1793.

"Mems. The words 'fodder' interlined before signing. William Penn, Thomas Johnson, Ann Taylor, Lucy Taylor."

A Codicil to this my last will, made the 11th day of September, 1794. Upon further consideration I devise and bequeath the following alterations and additions to my will above written. 1st, In lieu of the land devised to my present wife Sally, I give and devise her a part whereon I live ,beginning above Thomas Cramptons, where Dixon's line crosses North Bottle Swamp, running thence along Dixon's line until it strikes the path leading from my house to Benjamin Mondays, thence along that path to the public road, until it comes to the mouth of the lane leading to my house, thence along a path being a near way to the house through the field, by a *by a* cherry tree in a bottom to a persimmon tree on a rise, thence southerly a straight line to the head of a branch where the old road to the house used to cross, thence down that branch above the peach orchard to South Bottle Swamp below Burk's mill, and keeping the same course one hundred yards beyond it, thence running parallel with the said swamp one hundred yards southerly thereof, until it strikes Mr. John Pendleton's line, thence with his line and the line of the Honourable Edmund Pendleton up South Bottle, to the be-

ginning, one moiety of which said land I devise to her for life, and the other moiety during her widowhood. I also give to my said wife Sally, the cart, her choice of a pair of oxen, and the loom with all its slays, harness, and other appurtenances. This devise is made in lieu of dower. 2d. In lieu of the devise in the seventh clause in my will, having now another child born, I give and devise to my said youngest child Edmund, one moiety of the land given to his mother on her second marriage and the other at her death, and one twelfth part of the residuary estate mentioned in the fourth clause of this my will, (the land money excepted, of which he is to have no part,) which said residuary estate (that money excepted) and the advancements are now to be settled according to the principles of my will by twelve instead of seven, also a mare I had of John Harris, or if she should die before I do, any other horse to be selected by my Executors, all which property I give to Edmund in fee simple and absolutely, except in case he should die under age and without a child living at the time of his death, the whole thereof in that event is to be divided among my residuary legatees in the fourth clause mentioned, as if it had constituted a part of that residue. In the division of my estate, I direct that Edmund shall have a negro girl named Charity, at the value of thirty pounds. 3d. My son Ambrose having agreed to give 150 acres of my Kentucky land to save the whole for ten years, I devise that the contract be fulfilled, and that for this purpose the devisees of that land do contribute in proportion out of their devises. 4th. My son Thomas is to be charged ten pounds for a bed and furniture given to him since the date of my will. 5th. I do not mean to revoke any bequest in favour of my wife contained in my will, that relating to the land excepted, which is indeed included in the land now devised to her.

JOHN WALDEN. [SEAL.]

Signed, sealed, and published by the said John Walden, as a codicil to his last will and testament, in our presence and by his request, and in his presence we have subscribed our names as witnesses thereto, this 11th day of September, 1794.

"JOHN NORMENT,

his

WILLIAM ⋈ HUTCHINSON.

mark.

his

LEVI ⋈ HUTCHINSON.

mark.

At a Court held for Caroline County, at the court-house, on the 14th day of October, 1794, the will of John Walden, deceased, with a codicil annexed, was presented in court, the will was proved by the oath of Thomas Johnson and Ann Taylor, two of the witnesses thereto, and the codicil by the oath of William Hutchinson, a witness thereto and admitted to record, John Pendleton, one of the Executors therein named, came into court and removed his Executorship on motion of John Taylor, on his taking the oath and

entering into bond, a certificate is granted him for obtaining probate thereof, and ordered to be recorded."

Test, WILLIAM NELSON."
A Copy. Teste, JOHN L. PENDLETON, *C. C.*

VIRGINIA, *Caroline County*, to wit:

"I, John L. Pendleton, clerk of the court of the county aforesaid, do hereby certify, that the aforegoing is a copy of the will of John Walden, deceased, as fully and wholly as the same is contained upon the records of my office.

"In testimony whereof I have hereunto set my hand, and affixed the Seal of my Office, this the 25th day of November, in the year 1822, and in the 47th of the Commonwealth. [SEAL.]

"JOHN L. PENDLETON,
"*C. C. Car. County Court.*"

VIRGINIA, *Caroline County*, to wit:

"I, George Buckner, presiding magistrate in and for the county aforesaid, do hereby certify that John L. Pendleton, who hath signed the foregoing certificate, is clerk of the court of the County of Caroline, duly appointed and qualified, and that to all whose acts as such due faith and credit is and ought to be given, as well in courts of justice as thereout, and that this certificate aforesaid is in due form of law.

"Given under my hand and seal, this the 25th day of November, 1822.

"GEO. BUCKNER." [SEAL.]

KENTUCKY, SS.:

"I, Achilles Sneed, clerk of the court of appeals for the state aforesaid, do hereby certify that the foregoing instrument of writing, purporting to be a copy of the last will and testament and codicil to the will of George Walden, deceased, was this day duly recorded in my office, together with the testimonials thereto annexed. In testimony whereof I have hereto set my name, this 20th day of February, one thousand eight hundred and twenty-three.

"ACHILLES SNEED."

"Land Office Treasury Warrant, No. 2693. To the principal surveyor of any county within the Commonwealth of Virginia: This shall be your warrant to survey and lay off, in one or more surveys, for John Walden, his heirs or assigns, the quantity of two thousand acres of land, due unto the said Walden in consideration of the sum of eight hundred pounds current money, paid into the public treasury, the payment whereof to the Treasurer hath been

duly certified by the auditors of public accounts, and their certificate received into the land office.

"Given under my hand and the Seal of the said Office,
[SEAL.] on this eighteenth day of February, in the year one thousand seven hundred and eighty.

"S. CARR, *D. R. L. O.*"

"I assign all my right and title of two thousand acres, the within land, to Ambrose Walden. In witness whereof I have hereunto set my hand and seal, this 2d February, 1780.

"JOHN WALDEN, [SEAL.]

"*Teste*, "MATTHEW GAYLE," "JOHN GAYLE," "JAMES LUTLER."

"I assign 666⅔ — of this warrant to Simon *Ca*nton, his heirs, &c., May 22d, 1780.

"AMBROSE WALDEN. [SEAL.]

"*Test*, GEO. MAY.

"A Copy. Test, JNO. M. FOSTER, *Reg. L. Off.*
"By JAMES Y. LOVE, *Dep. Regr.*"

"Land Office Treasury Warrant, No. 2706. To the principal surveyor of any County within the Commonwealth of Virginia: This shall be your warrant to survey and lay off, in one or more surveys, for John Walden, his heirs or assigns, the quantity of two thousand acres of land, due unto the said Walden, in consideration of the sum of eight hundred pounds current money, paid into the public treasury, the payment whereof to the treasurer hath been duly certified by the auditors of public accounts, and their certificate received into the land office.

"Given under my hand and the seal of the said office,
[SEAL.] on this eighteenth day of February, in the year one thousand seven hundred and eighty.

"S. CARR, *D. R. L. O.*"

"I assign 334⅓ acres of this warrant to Simon Kenton, his heirs, &c., May 22d, 1780.

"AMBROSE WALDEN. [SEAL.]

"*Test*, GEO. MAY.

A Copy. Test, "JNO. M. FOSTER, *Reg. L. O.*,
"By JAMES Y. LOVE, *Dep. Reg.*"

"22d May, 1780. Simon *Ca*nton, assignee, &c., enters 1000 acres upon treasury warrants on the north side of the North Fork of Licking, on the lower side of a big branch, emptying in below the mouth of Limestone, on the west side, to extend up the branch one mile, and from thence west for quantity, including an improvement of Samuel Wells."

JNO. M. FOSTER, *Reg. L. Off.*
A Copy. *Test*, By JAMES Y. LOVE, *Dep. Reg.*

"May 29th, 1780, Garrett Bolin enters a preemption warrant of 1000 acres on the north fork of Licking, about thirteen miles east of the Blue Licks, and about two miles east of the Buffaloe road from the Blue Licks to Cabbin creek. Beginning on the east line of Jacob Johnson's preemption, running east for quantity, and north down the north fork."

A Copy. *Att.* "THOS. BODLEY."

Upon the back of which entry is endorsed the following: "This copy of an entry in the name of Garrett Bowlin, may be used in the suit Bodley and Pogue against Walden, and have the same effect as if legally certified as a copy.

"REID, *Atto. for Defts.*"

February the 21st, 1780. Peter Johnson, heir, &c. Enters 400 acres in Kentucky, by virtue of a certificate, &c., lying on the east side of the Buffaloe road leading from the Blue Licks to Limestone; nine miles from the Licks on the upper road.

A Copy. *Test,* O. BELT, *D.* for
JOHN M. FOSTER, *R. L. O.*

May 30th, 1783. Peter Johnson, heir at law of Jacob Johnson, deceased, enters 100 acres of land on preemption warrant No. 2346, on the waters of Licking Creek, about 10 miles from the Blue Licks, adjoining the said Johnson's settlement on the south and east and on the north and west.

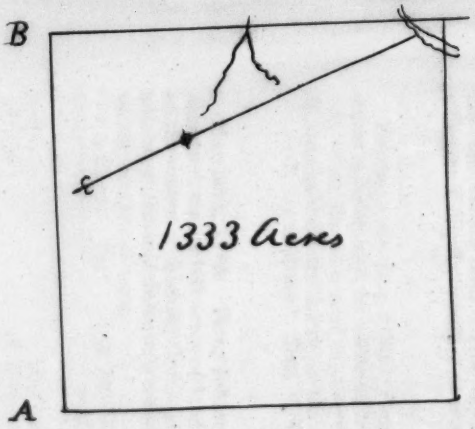
"A Copy. *Test,* A. W. WALLER, *D. C. C. A., for*
"ACHILLES SNEED, *C. C. A.*"

Nov. 29th, 1785, surveyed for Ambrose Walden, 1333 acres of land, by virtue of an Entry made 22d May, 1780, on part of a Treasury Warrant No. 2693, situate on the waters of Johnson's Fork of Licking, adjoining Jacob Johnson's preemption on the east side, bounded as follows, viz.: Beginning on his N. E. corner at A. a buckeye and hoop ash trees, thence S. 68 E. 450 poles to two red oaks and honey locust at B.; thence south 22, west 473¾ poles to an ash, Spanish oak, and mulberry and buckeye trees, standing on the bank of a small branch; thence N. 68, west 450 poles to a hickory, red oak and white oak, the S. E. corner of Johnson's preemption, and with a line of the same N. 22, E. 473¾ poles to the first station.

WILLIAM HENRY, *D. S. F. C.*
THOS. MARSHALL, *S. F. C.*

WILLIAM BECKLEY, }
WILSON MADDOX, } *C. C.*
MASON OWEN, *Marker.*
SIMON KENTON, *Pilot.*

A Copy. RICHARD HIGGINS, *late S. F. County.*



Rec'd. Sept. 1st.

Fayette County, Decr. 27th, 1785. Then surveyed for John Walden 1666⅔ acres of land, agreeable to an Entry made 22d May, 1780, on part of a Treasury Warrant No. 2706, situate on the waters of Johnson's Fork, adjoining Ambrose Walden's survey of 1333 acres, on the south east sides, bounded as follows, to wit: Beginning at the south west corner of said Walden's survey at A., a hickory, whiteoak and red oak, thence south 68, east 450 poles to an ash, Spanish oak, buckeye and mulberry, at B., the south east of Walden's, and with a line of the same N. 22°, E. 164 poles, to two sugar-trees and two white oaks in said Walden's line; thence 68 E. 284 poles to a locust, white oak and coffee trees, thence S. 22 W. 464 poles to two Spanish oaks and a cherry tree, thence N. 68, W. 734 poles, to a hickory in a bend of Johnson's fork, thence N. 22, E. 300 poles to the beginning.

WM. HENRY, *D. S. F. C.*
THOS. MARSHALL, *S. F. C.*

WM. MADDOX, } *C. C.*
WM. BOCKLEY, }
MASON OWENS, *Marker.*

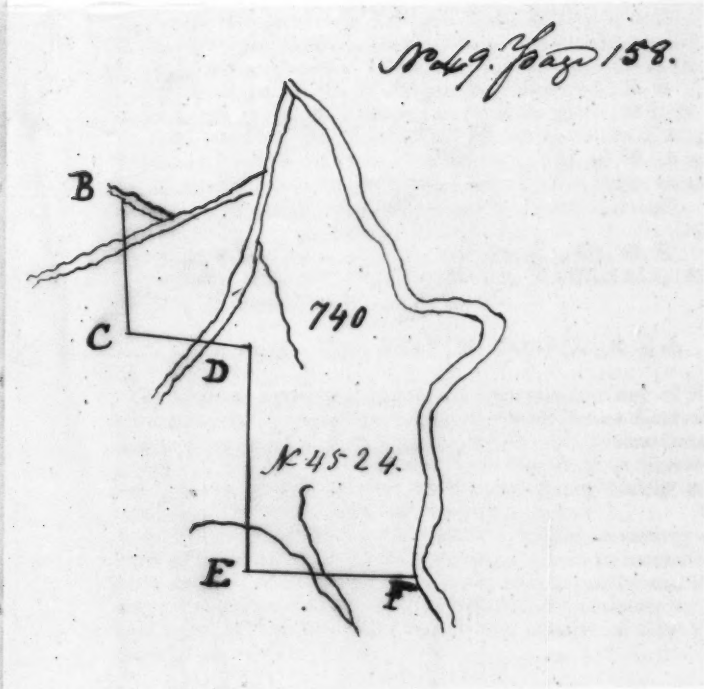
"A Copy. RICH. HIGGINS, *late S. F. C.*

FAYETTE COUNTY, *January 6th*, 1786.

Surveyed for Simon Kenton, Assignee, &c. seven hundred and forty acres of land, part of an entry of 1000 acres made on part, two treasury warrants, No. 2693 and 2700, entered 22d of May, 1780, situated, lying and being on the North side of a big branch emptying into the said North fork, South-eastwardly from the mouth of Limestone and bounded as follows, to wit:

Beginning at A, a large white oak two hackberrys, and buckeye, on the bank of said North fork at the mouth of said large branch on the lower side, thence up the said branch on the West side as it meanders N. 6 poles. S. 60 W. 10 poles N. 58 W. 6 poles N. 13 W. 5 poles N. 64 W. 8 poles West 15 poles S. 75 W. 12 poles S. 88 W 12 poles S 80 W 17 poles N. 83 W 15 poles N. 31 West 20 poles. N. 14 W 22 po: N. 12 po: N. 20 W. 12 po: N. 20 E 14 po: N. 17 W. 21 po: N. 35 W. 48 po: N. 30 W 22 po: N. 5 W 10 poles N. 58 E 24 poles N. 75 E 9 poles to B a sugar-tree on the West side of said branch, thence West 170

Scale 200 po. per Inch,
Variation, 3° 50′ East.


No 49. Page 158.
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No 4524.
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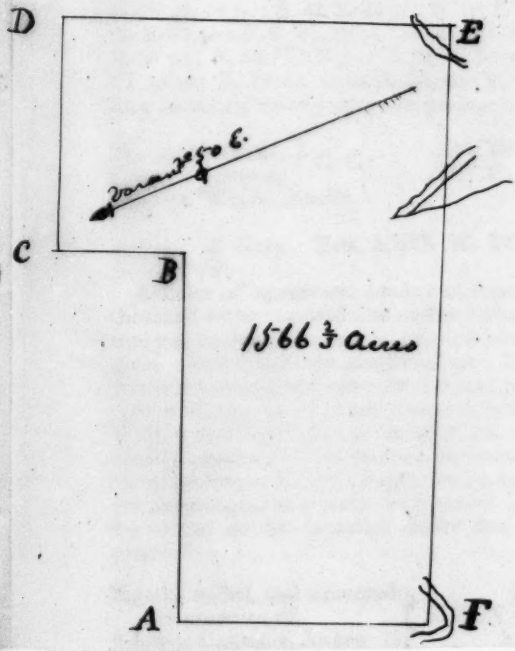
No 49. Page 168.



poles to C two white oaks and buckeye in a line of a survey of 500 acres made for Edmund Payne, and with the same South 150 poles to D a buckeye and elm saplin, corner to said Payne and with the same West 280 poles to E two hickories and white oak in said line, thence South 208 poles to F a hickory, white oak, hackberry, elm and buckeye on the bank of the north fork, thence up the same with its meanders, N 47 E 45 po: E. 24 po: S 10 W. 45 po: S. 13 E. 40 po: S. 45 E 9 po: N. 65 E 27 po: N. 55 E 70 po: N. 70 E. 44 po: S. 80 E. 28 po: S. 48 E. 36 poles S. 17 E 63 poles S. 63 E 32 poles S. 75 E. 54 po: N. 83 E 23 po: N. 20 W. 28 po: N. 32 W. 26 po: N. 40 W. 37 po: N. 15 W. 36 po: N. 9 E 38 po: N. 45 E 17 po: S. 78 E. 18 po: S. 45 E 22 po: S. 38 E 38 po: S. 70 E 22 poles N. 80 E 31 po: F. 5 W. 19 po: N. 22 W. 32 po: N, 24 E 26 po: N. 76 E 16 po: N. 80 E 112 po: N. 20 E 14 po: N. 48 W 15 po: N. 60 W 18 po: N. 20 po: N 50 E. 24 po: N. 80 E 8 poles to the beginning including an improvement made by Samuel Wells."

SAMUEL STEELE, GEO. NASHBURNE, } *C. C.* ARTHUR FOX, *D. S.*
CHRISTO. WOODS, *Mark'r.* THOS. MARSHALL, *S. F. C.*

A Copy. Test, JOHN M. FOSTER, *R. S. O.*

Articles of agreement made and done this first day of May, one thousand seven hundred and eighty, between Simon Kenton of Kentucky of the one part, and Ambrose Walden of Caroline County, Virginia. Witnesseth that the said Simon Kenton, doth bind himself to locate ten thousand acres—for the said Ambrose Walden in the District of Kentucky, in consideration of which the Ambrose Walden doth bind himself, his heirs and assigns, to convey a proper deed of one-third of the said ten thousand acres so located unto the aforesaid Simon Kenton, respect being held to quality and other local advantages, and lastly both parties bind themselves to the performances of the premises under the penalty of fifty thousand pounds."

Signed, sealed, and delivered in presence of "ANGUS CAMERON, JOSEPH KAKITE, STEPHEN HUSTON. } his SIMON ⋈ KENTON. [SEAL.] mark AMBROSE WALDEN. [SEAL.]

I do assign over all my right, title and interest, of the within article to John Craig and Robert Johnson, this 24th day of April, 1787.
"SIMON KENTON."

JOHN WILSON, JAMES TURNER. }

"I do assign the within to Robert Johnson and Elijah Craig. Witness my hand, May 18th, 1791.

"ROBERT JOHNSON."

"TOLEVER CRAIG."

We assign to Lewis Craig, the third part of 3000 acres, entry in the name of Walden, and one-third of 3000 acres, entry in the name of John Taylor, and one-third of 1500 acres, in the name of William Nelson, John Craig's interest is only given up. Dec'r. 28th, 1793."

ROBERT JOHNSON,
Trustee to John Craig.
ELIJAH CRAIG,
Trustee to John Craig."

UNITED STATES OF AMERICA, *7th Circuit Court, Kentucky District,* ss.

I, John H. Hanna, clerk of the seventh Circuit Court of the United States, in and for the Kentucky District, do hereby certify that the aforegoing agreement with the assignments thereon, is truly copied from the original in my office, filed in the suit, A. Walden against Lewis Craig, &c. Given under my hand this 10th day of September, 1809.

JOHN H. HANNA, *C. C. C. K. D.*

Upon which is endorsed the following, to wit:

"The foregoing agreement and assignments (except the last) are admitted as evidence of the originals and of their actual existence, but the last assignment is devised and full proof of it will be required."

JAMES A. PAXTON, *Atto. for*
Bodley & Pogue vs. *Walden & al.*

"This Indenture made this 26th day of April, in the year of our Lord, 1791. Between John Craig and Sarah, his wife, of the County of Woodford of the one part, and Robert Johnson and Elijah Craig of the other part, witnesseth that, whereas the said John Craig being seized and *possed* of a very considerable estate both real and personal, and being also indebted large sums of money to divers persons, and being unable at this time from misfortunes and other causes to pay and satisfy the same, and being also from sickness and other infirmities both of body and mind, unable to transact his business and manage his estate and being willing to pay and satisfy his creditors, their respective debts and his estate real and personal being judged more than sufficient to answer that *that* purpose if properly managed and conducted, and the said Sarah being willing that all of the estate of the said John, except so much thereof as shall be necessary for her support and maintenance, shall be applied to the payment of said debts, and for that purpose hath agreed to part with all her interest and claim therein, except as is above excepted so as to bar herself of all her right and title of dower, of, in and to the

estate of the said John, and whereas, the said Robert Johnson and Elijah Craig, at the instance of the said John Craig, have consented to undertake the management of the estate of the said John Craig, for the purpose aforesaid. Now this Indenture witnesseth that the said John Craig and Sarah his wife, for and in consideration of the purposes above mentioned, and also for and in consideration of the sum of five shillings to them, by the said Robert Johnson and Elijah Craig in hand paid, the receipt whereof they do hereby acknowledge and thereof acquit the said Robert Johnston, and Elijah Craig have granted, bargained and sold, and by these presents, do grant, bargain and sell, unto the said Robert Johnson and Elijah Craig, and their heirs and the survivors of them and the heirs, Executors, administrators and assigns of such survivor, all the estate both real and personal of which the said John Craig is now possessed or entitled to in law or equity, whether the same consists of lands, slaves, household and furniture goods, chattels, debts, or other effects whatsoever, which are now due and belonging to the said John Craig, except the wearing apparel of the said John and Sarah, and except also the lands, slaves and personal property mentioned and contained in an Indenture bearing even date with these presents, made or mentioned to be made between the said John Craig and Sarah his wife, of the one part, and the said Elijah Craig and Robert Johnson of the other part, which said land, slaves and personal property so contained in the said Indenture are hereby declared to be excepted out of the estate of the said John Craig hereby granted and sold to the said Robert Johnson and Elijah Craig, for and during the term created by the *Indure*, and no longer, and that after the expiration of the said term, the land, slaves, and personal property contained and mentioned in the said Indenture, shall be vested in the said Robert Johnson and Elijah Craig, in as full and ample a manner as only other part of estate of the said John Craig is hereby sold, and to and vested in the said Robert Johnson and Elijah Craig. To have and to hold all the said estate of the said John Craig, both real and personal, whether he be entitled to the same in law or in equity, except as is above excepted to the said Robert Johnson and Elijah Craig and their heirs, or the survivor of them, and to the heirs, executors, administrators, and assigns of such survivor, together with full power and authority from them the said Robert Johnson and Elijah Craig, or the survivor of them, or the heirs, executors, administrators, or assigns of such survivor, to commence any action, or actions, or suits for the recovery of any lands, slaves, debts, or other personal property due to the said John Craig, or withheld from him by any other person or persons, and the same to release and discharge, together also, with full power and authority to sell and dispose of the whole or any part of the estate of the said John Craig hereby granted to the said Robert Johnson and Elijah Craig and to settle any disputes which have arisen or may hereafter arise concerning any part of the said estate either by arbitration or any other manner which they may thing best to lay of and divide, all lands which the said John Craig holds in partnership with

any other persons whatsoever, provided that the above named Elijah Craig alone shall lay off and divide the lands which the said John Craig holds in partnership with the said Robert Johnson, to fulfil all the contracts of the said John Craig, and to execute all deeds and conveyances which may be necessary for the complete enjoyment and execution of the estate and powers hereby granted by the said John Craig to the said Robert Johnson and Elijah Craig, as fully, amply, and effectually, to all intents and purposes whatever, as the said John Craig could or might do if personally present, or in case these presents had not been made nevertheless so far and upon the several trusts, intents and purposes hereafter mentioned and expressed of and concerning the same, that is to say, upon trusts that the said Robert Johnston and Elijah Craig, or the survivor of them, or the heirs, executors, administrators, or assigns, shall and do as soon as can or may be by sales, absolutely sell and dispose of the said estate of the said John Craig, or so much thereof as shall be sufficient to satisfy the debts as aforesaid, and the expenses attending the execution of this trust, and after such sale or sales upon this further trust. That they the said Robert Johnson and Elijah Craig shall well and truly apply the monies arising from the said sales after retaining and deducting so much thereof as shall be sufficient to reimburse them, their reasonable expenses in*am*ed in the execution of the trust, and to pay them a reasonable reward for their trouble in executing the same, to and among all the creditors of the said John Craig as far as the same shall extend, to pay and satisfy their demands, according to the true intent and meaning of these presents, upon this further trust, that the said Robert Johnston or the survivors of them shall, after having paid and satisfied all the debts now due by the said John Craig, *of* the said John Craig shall be then alive, reconveyed to the said John Craig so much of the said estate of the said John Craig, as shall not have been applied to the purposes aforesaid, in as full and ample a manner as the said John Craig hath hereby conveyed the same to the said Robert Johnston and Elijah Craig, and if the said John should before that time have departed this life, that the said Robert Johnston and Elijah Craig shall convey so much of the said estate as shall then remain in their hands as aforesaid, to such persons, and in such manner as the said John Craig shall by his last will *shall* direct, and in case the said John Craig shall depart this life without having made such will, that then the said Robert Johnston and Elijah Craig shall convey so much of the said estate as shall remain in their hands as aforesaid, to the above named Sarah Craig, and to John Hawkins, Elijah, Lewis, Sally, Benjamin, Francis, Nancy, Philip, and Polly Craig, and to their heirs, to be equally divided between them as tenants in common, and the said John Craig and Sarah his — for themselves and their representatives, his executors and administrators do covenant, promise and agree to, and with the said Robert Johnston and Elijah Craig, their heirs, executors, administrators, and assigns, by these presents, that they the said John Craig and Sarah his wife, their heirs, executors,

and administrators, shall and will at any time hereafter, upon the request of the said Robert Johnston and Elijah Craig or either of them make, do and execute all and every such other and further lawful acts, deeds and things, as may be necessary as well for the corroborating and strengthening of these presence as also for the further, better, and more perfectly granting *granting*, assuming, and confirming of all and singular the estate herein before mentioned and intended to be granted unto the said Robert Johnston and Elijah Craig, their heirs, executors, administrators and assigns, provided that the said further deeds and assurances shall be made upon the several trusts, intents and purposes herein before mentioned, expressed and declared of and concerning the said estate.

In witness whereof the parties have hereunto set their hands and seals the day and year above written.

Signed, sealed and delivered in the presence of JACOB MARTIN, JOHN O. BANION, JOHN H. CRAIG, JAMES his ✕ mark VANLANDINGHAM, JESSE PEAK, JAS. HUGHES, WM. STEELE, JAMES BOWDRY,

JOHN CRAIG. [SEAL.]
SARAH CRAIG. [SEAL.]
ROBERT JOHNSTON. [SEAL.]
ELIJAH CRAIG. [SEAL.]

An Inventory of the personal estate of John Craig, conveyed to Robert Johnston and Elijah Craig, in a deed of trust bearing date the 26th of April, 1791, bearing the same date with this Inventory, according to the best information obtained twenty-seven slaves, to wit: James, James, Charles, Daniel, Harry, Edmund, Will, Dick, Warrick, Amos, Michel, David Charles, Joseph, Judy, Sylvia, Fanney, Hannah, Rose, Suckey, Dickey, Richey, Rissey, Polly, Isbell, Ralph, Barnaby, four stills, thirty head of cattle, three horses, one wagon, sixty head of sheep."

Witness, JACOB MARTIN, JOHN his ✕ mark O. BANION, JOHN H. CRAIG, JAMES his ✕ mark VANLANDINGHAM, SAMUEL TRACY, J. HUGHES, WILLIAM STEELE, JAMES BOWDRY.

ROBERT JOHNSTON,
ELIJAH CRAIG.

The Commonwealth of Virginia to John Watkins, William Steele and John Fowler of the County of Woodford, Gentlemen, Greeting. Whereas, John Craig and Sarah, his wife, by their certain Indenture of bargain and sale, bearing date the 26th of April, in the year of our Lord one thousand seven hundred and ninety-one, here sold and conveyed to Robert Johnson and Elijah Craig the

whole estate both real and personal of the said John Craig, which said real estate is situated within the District of Kentucky, and whereas the said Sarah cannot conveniently travel to our Supreme Court for the District of Kentucky, to make acknowledgments of the said conveyance, therefore we do give unto you, or any two or more of you, power to receive the acknowledgment which the said Sarah Craig shall be willing to make before you, of the conveyance aforesaid contained in the said Indenture hereto annexed, and we do command you that you do personally go to the said Sarah Craig, and receive her acknowledgments of the same, and examine here privily and apart from the said John, here husband, whether she doth the same freely and voluntarily without his persuasions or threats, and whether she be willing that the same should be recorded in our said court, and when you have received her acknowledgment and examined her as aforesaid, you distinctly and openly certify us thereof, in our said court, under your hands and seals, finding then there this writ. Witness Christopher Greenup, clerk of our said Court, at the court-house, the 22d day of April, 1791, in the 15th year of the Commonwealth.

CHRIST. GREENUP.

Woodford, to wit. We do certify that we did on the 27th day of April, 1791, personally attend on the within named, and received here acknowled*ed* of the annexed deed indenture, having first examined the said Sarah Craig privily and apart from the said John, her husband, and that she then and there declared that she had executed and acknowledged the said deed freely and voluntarily without the persuasions or threats of her said husband, and that she is willing and desirous that the said deed shall be admitted to record in the Supreme Court for the District of Kentucky. Given under our hands and seals, the date above written.

JOHN WATKINS. [SEAL.]
WILLIAM STEELE. [SEAL.]

At a Supreme Court held for the District of Kentucky, the 9th day of June, 1791. This Indenture, by way of a deed of trust with an inventory annexed, was proved to be the act and deed of the within named John Craig, a party thereto, by the oaths of Jacob Martin, James Vallandington, and *and* Jesse Peak, three of the witnesses thereto, and together with the commission for the privy examination of the within named Sarah Craig, another party thereto, with a return of the execution thereof thereon endorsed was ordered to be recorded.

Test. CHRISTOPHER GREENUP, *C. S. C.*

A Copy. *Test.* A. G. BONDURANT, *D. C. for*
ACHILLES SNEED, *C. C. A.*

Mason County, to wit. We, Commissioners appointed by the worshipful the Court of Mason aforesaid, for the purpose of dividing lands held in partnership between citizens of this Common-

wealth and non-residents, and being called on to divide a tract of land containing one thousand three hundred and thirty-three acres, patented in the name of Ambrose Walden, between him the said Ambrose and Lewis Craig, assignee of Craig *assignee of Craig*, and Johnston of Simon Kenton, the locator of the said tract, two-thirds of which said tract is the property of the said Walden, and the other third the property of the said Lewis Craig, as aforesaid, proceeded on this day to the same in the said proportions, that is to say, one-third to the said Craig, and the remaining two-thirds to the said Ambrose Walden, as follows, to wit, Beginning at Walden's south-east corner a mulberry, buckeye, Spanish oak, and ash called for in the original patent, thence north 22 east, with the old line 155 poles to two white ashes and sugar-tree, thence, north 61 degrees, west 329 poles to a walnut and two red oaks. Johnson's line, thence south 51 west with Johnson's line, 168 poles, to three white oaks in John Walden's line: thence to the beginning, containing three hundred and twenty acres, to have and to hold the said quantity of three hundred and twenty acres, to him the said Lewis Craig, his heirs and assigns for ever, free and clear from the let, molestation, and hindrance of him, the said Ambrose Walden, his heirs, &c. for ever, and to hold to him, the said Lewis Craig, his heirs, &c. in severalty, and no longer subject to the claim of him, the said Walden. Also divided the said tract of land as follows, to wit, Beginning at two white ashes and sugar-tree in John Walden's line, and corner to Lewis Craig, thence, N. 22 E. 375 poles, to a red oak and honey-locust, thence, N. 68 W. 260 poles, to a white oak and box-elder in Jacob Johnson's line, thence, with said line, S. 39 E. 112 poles, to two buckeyes and white oak, east corner to the said Johnson, thence, S. 51 W. 340 poles, to a walnut and two red oaks, corner to Lewis Craig, thence, S. 61 E. 329 poles to the beginning. To have and to hold the said tract of land, containing six hundred and forty acres, to him, the said Ambrose Walden, and his heirs, &c. for ever, in severalty, and free and clear from the claim of him, the said Lewis Craig, as assignee, as aforesaid, and his heirs and assigns for ever. And we, the said commissioners, do certify and declare that the residue of the said survey in the name of the said Ambrose Walden, is interfered with by a certain claim in the name of Jacob Johnson, and therefore not divided, but is on that account left in tenancy in common between the said Ambrose Walden and the said Lewis Craig, and subject to a future division as the event of the said interference may justify. In witness whereof we, the said commissioners have hereunto set our hands, and affixed our seals this 10th day of February, 1794."

Signed, sealed, and delivered before } DAVID MORRIS. [SEAL.]
D. V. PAYNE. [SEAL.]

MASON COUNTY, *ss. April Court*, 1797.

This division of lands between Walden and Craig was returned by the Commissioners, and ordered to be recorded.

Test, T. MARSHALL, JR. *C. M. C.*

A Copy. *Attest*, MARSHALL KEY,
Clerk Mason County Court.

MASON COUNTY, *ss. January Court*, 1794.

Henry Lee, Arthur Fox, John Blanchard, Thomas Davis, David Morris, and Duvall Payne are appointed Commissioners in pursuance to an act of Assembly for dividing lands between non-residents, tenants in common, and residents."

A Copy. *Attest*, MARSHALL KEY,
Clerk Mason County Court.

Know all men by these presents, that I, Lewis Craig, of the County of Mason, and State of Kentucky, am held and firmly bound unto Daniel Threlkeld, of the County and State aforesaid, in the just and full sum of two hundred pounds current money, to the which payment I bind myself, heirs, &c. this 27th day of March, 1798. The condition of the above obligation is such, that if the above bound Lewis Craig, or his heirs, shall well and truly make to the said Threlkeld a good and sufficient deed in fee simple to seventy-two acres of land, to include the plaice where the said Threlkil now lives, Beginning at two box-elders and elm, thence, S. 88 W. 92 poles, to a hickory, ash and oak, thence, N. 2 W. 146 poles to an ash and iron-wood in Walden's line, thence S. 68 E. 101 poles to two small hickories and elm, thence, S. 2 E. 105 poles, to the beginning; the deed to be made in six months, then the above obligation to be void, else to remain in full force and virtue in law. Given under my hand the day and year above mentioned."

LEWIS CRAIG. [SEAL.]

Test, D. V. PAYNE.
R. W. WARING.
JOHN NICHOLS.

Upon which bond is the following assignment, to wit:

"For value received, I assign the within bond unto John Threlkeld, as witness my hand this 5 day of April, 1802.

"DANIEL THRELKELD.

"*Test*, HENRY BRUCE.
LUCY THRELKELD."

"This Indenture, made this ninth day of July, in the year of our Lord one thousand seven hundred and ninety-eight, between Lewis Craig of the County of Mason, and Commonwealth of Kentucky, on the one part, and John Threlkeld, of the County of Fleming,

and State aforesaid, on the other, witnesseth, that the said Lewis Craig for and in consideration of the sum of twenty-three pounds current money of the United States to him in hand paid, the receipt whereof he doth hereby acknowledge, and for ever acquit and discharge the said John Threlkeld, his heirs, executors, and administrators, hath granted, bargained, sold, aliened, and confirmed, and by these doth grant, bargain, sell, alien, and confirm unto the said John Threlkeld, his heirs and assigns for ever, all that tract of land lying and being in the County of Fleming, being a part of a tract of land purchased of the said Lewis Craig by James and Ann Threlkeld, containing two hundred and fifty acres on the waters of the flat fork of Licking, and to contain fifty acres bounded as follows, to wit: Beginning at a small hickory at the north-west corner of Ann Threlkeld's land, on the division line between James and Ann Threlkeld, and run south seventy degrees, east ninety-six poles to a buckeye standing near a small run near Daniel Threlkeld's fence, thence north forty-four poles to a black walnut and *sone* small sugar trees, thence north seventy degrees, W. 150 to a blue ash and buckeye, thence south, 20, west 64 poles to two sugar trees, thence south 70, E. 64 poles to a stake standing on the above mentioned division-line, thence north twenty degrees, east to the place of beginning. Together with all improvements, water-courses, profits and appurtenances whatsoever to the said premises belonging, or in any wise appertaining, and the reversion, remainders and profits thereof, and all the estate, title and interest, property claim and demand of him, the said Lewis Craig, of, in and to the same. To have and to hold the land hereby conveyed, with all and singular the premises, and every part and parcel thereof, with every of the appurtenances, unto the said John Threlkeld, his heirs and assigns for ever, and to the only proper use and behoof of him, the said John Threlkeld, his heirs and assigns for ever, and the said Lewis Craig, for himself, his heirs, executors and administrators, doth covenant, promise and agree, to and with the said John Threlkeld, his heirs and assigns by these presents, that the premises before mentioned now are and for ever hereafter shall remain free of and from all former gifts, grants, bargains, *sails*, dower rights, and titles of dower, judgments, executions, titles, troubles, charges, and incumbrances whatsoever, done or suffered to be done by him, the said Lewis Craig of Mason County, State of Kentucky, and his heirs, all and singular, the premises hereby bargained and sold, with the appurtenances, unto the said John Threlkeld, his heirs and assigns, against him the said Lewis Craig and his heirs, and every other person or persons whatsoever, doth and will warrant and for ever defend by these presents.

In testimony whereof, I, the said Lewis Craig, do hereunto affix my hand — seal, the day and year above written.

Signed, sealed, and delivered in presence of } LEWIS CRAIG. [SEAL.]

Interlined before signing 2d line from the top, and 5th from the bottom, and Mason put in instead of Bourbon.

At a Court continued and held for Fleming County the 9th day of July, 1798.—This indenture of bargain and sale from Lewis Craig to John Threlkeld, was acknowledged by the said Lewis Craig, and ordered to be recorded.

Test, JOSHUA STOCKTON, *C. F. C. P. T.*

This indenture, this twelfth day of January, in the year of our Lord, one thousand eight hundred and one, between Lewis Craig, of the County of Mason, and Commonwealth of Kentucky of the one part, and Ann Threlkeld, of the County of Fleming and state aforesaid, of the other: Witnesseth, that the said Lewis Craig, for and in consideration of the sum of forty-six pounds, current money of the United States, to him in hand paid, the receipt whereof he doth hereby acknowledge, and for ever acquit and discharge the said Ann Threlkeld, her heirs, executors and administrators, hath granted, bargained, sold, aliened, and confirmed, and by these presents doth grant, bargain, alien and confirm unto the said Ann Threlkeld, her heirs and assigns for ever, all that tract or parcel of land, lying and being in the County of Fleming, being a part of John Walden's survey on the waters of the flat fork of Johnston, and bounded as follows, viz. Beginning at a hickory and blue ash, adjoining John Threlkeld's land and run, south seventy degrees, east ninety-six poles, to buckeye, box elder, and small oak adjoining Daniel Threlkeld's land, thence south, ninety-eight poles, to a blue ash and hickory, thence east, ninety-two poles, to a honey-locust, buckeye and box elder, thence south, twenty degrees, east, forty-five poles, to a sugar tree, blue ash and oak, thence north, eighty degrees, west, two hundred and twenty poles, to a blue ash, black ash, and buckeye adjoining John Price's land, thence north, twenty degrees, east, one hundred and twenty-nine poles, to the place of beginning, to contain one hundred acres, more or less, together with all the improvements, water-courses, profits and appurtenances whatsoever, to the premises belonging, or in any wise appertaining, and the reversion, remainder, and profits thereof, and all the estate, right, title, and interest, claim, property and demand of him, the said Lewis Craig, of, in, and to the same. To have and to hold, the lands hereby conveyed, with all and singular the premises, with every part and parcel thereof, with every of the appurtenances, to the only proper use, benefit and behoof of her, the said Ann Threlkeld, her heirs and assigns for ever. And the said Lewis Craig, for himself, his heirs, executors and administrators, doth covenant, promise and agree, to and with the said Ann Threlkeld, her heirs and assigns, by these presents, that the premises now are, and for ever shall hereafter remain free of, and from all former and other gifts, grants, bargains, sales, dowers, right and titles of dowers, judgments, executions, titles, troubles, charges and incumbrances whatsoever done, or suffered to be done by him, the said Lewis Craig: and the said Lewis Craig, of Mason County, State of Kentucky, and his heirs, all and singular the premises hereby bargained and sold, with the appurtenances, unto the said Ann Threlkeld, her heirs

and assigns, against him, the said Lewis Craig and his heirs, and all and every other person or persons whatsoever, doth and will warrant and for ever defend, by these presents.

In testimony whereof, the said Lewis Craig doth hereunto affix his hand and seal the day and year above written.

Signed, sealed and delivered in presence of } LEWIS CRAIG. [SEAL.]

STATE OF KENTUCKY, *Washington District, ss.*

I, John Chambers, Deputy Clerk of the Washington District Court, do certify, that this indenture from Lewis Craig to Ann Threlkeld, was this day produced before me, acknowledged by the said Lewis Craig, a party thereto, and is duly recorded in the office of the said Court.

Given under my hand this 12th day of January, 1801.

"JOHN CHAMBERS."

(A Copy) *Att.* MARSHALL KEY,
Clerk Mason County Court.

"The defendants objected to the admissibility as evidence of, 1st. The power of attorney filed by the complainants, purporting to be a power of attorney from Peyton, Magill and Rutherford. 2d, to the deed purporting to be the deed of Rutherford, Peyton and Magill, to Bodley. 3d, To the deed, purporting to be the deed from Tibbs to Peyton. They object also the copy of the assignment, purporting to be the assignment of Simon Kenton to Wood & Fox, of his survey of 740 acres (for want of proof of its execution by Kenton.)

REID & CHAMBERS, *P. D.*

By consent of the parties, Joseph Morrison is appointed to make out a survey, to be used on the trial of this suit; and he is permitted to lay down the claims of the parties from a copy of the survey filed in the suit, Bodley &c. against John Taylor, and that he be authorized to lay down any Buffaloe road, or other object, which either party may direct, from the survey made out by Zachariah Easton, in the suit Bodley against Shannon, &c. or from other surveys returned by said Morrison in any other suit in the Fleming or Mason Circuit Court, or surveying done by him on the ground. And the patent claims of Walden, as well as the patent claims of the complainants, so far as relates to boundary, is admitted."

REID, *for Proctor's Heirs,*
JOHN & ANN THRELKELD.
THOS. BODLEY, *for Compl'ts.*

"The deposition of Simon Kenton, taken at the house of James Artus, in the presents of the attornies for the parties, to be read as evidence in a suit in Chancery, now depending in the Fleming Circuit *Circuit* Court, wherein Thomas Bodley and Robert Pogue are complainants, and Ambrose Walden and others are defendants, this deponent being first duly sworn, deposeth and saith, that about the 1st of May, 1780, he entered into an agreement with Ambrose Walden, to locate 10,000 acres of land warrants on the shares, for which service this deponent was to have one-third part of the land so located; after this agreement was signed, and before the warrants were located, this deponent made application to have a part of the warrants assigned to him, that they might be entered in his own name, Walden done so, and this deponent has a perfect recollection of 1000 acres which he entred at the mouth of Strode's run, and he thinks another small warrant of about 300 acres—about the year 1786 or 7, or perhaps 1785, this deponent sold his interest in the land located under the agreement to Wood & Fox, without reserving the warrants which ware assigned before the locations ware made, after the sail was made, and discovering the mistake, this deponent went forward and transferred the land to said Wood & Fox, or to some person agreeable to thair orders to fill the article. This deponent thinks that Wood & Fox sold the interest to John Craig and Robert Johnston, and it may be that the interest of the locator might have been transferred directly to Craig and Johnston, having previously taken a release from Wood & Fox, or Craig and Johnson.

Questions by defendants. Who is entitled to the 1000 acres, Wood and Fox, or Craig and Johnston? I mean the 1000 acres located at the mouth of Strode's Run, in your name, as assignee of Walden? Answer. I cannot tell; I sold to Wood and Fox, but whether I assigned to them in writing, or to Craig and Johnston, who purchased of them, I do not remember. By same. Did you receive the 1000 acres located at Strode's Run, and the 300 acres, or either, or all, in full for locating the 10,000 acres? Answer. I was to have one-third of the 10,000 acres, by agreement, and I did receive by assignment of warrants, perhaps 1000 acres, and 300, but I am not certain as to the latter; I know I received 1000 acres by assignment, in part of my third part of 10,000, from Ambrose Walden. I will add that the agreement was dated the first of May, 1780, a copy is hereto annexed, and a copy of the assignment to Craig and Johnston, made by me on the 24th of April, 1787, together with the assignment from Robert Johnston to Robert Johnston and Elijah Craig, trustees for John Craig, dated the 18th of May, 1791, and the assignment also to Lewis Craig, dated 28th December, 1793, made by Robert Johnston and Elijah Craig, trustees for John Craig; but the last assignments I know nothing about, it may be, that I made the one to Craig and Johnston, and I think it probable, because they purchased of Wood and Fox, to whom I first sold.

SIMON KENTON.

July 27th, 1822.

MASON COUNTY, ss.

The foregoing deposition of Simon Kenton was taken, subscribed, and sworn to, before the undersigned, a Justice of the Peace for said county, at the house of James Artus, on the 27th July, inst. Given under my hand, this 27th day of July, 1822.

JAMES ELLIS.

June the 9th, 1821. Being called on by Robert Pogue, at the request of Thomas Bodley, to state what I know about the road from Limestone to the Upper Blue Lick, I can only state that as early as the year 1784, the year I came to Kentucky, there was a road that came from Limestone that crossed the North Fork at the mouth of Mill Creek, and went by the way of Mud Lick; on the Upper Blue Lick the road was plain and had an old appearance. There was also a fork that took of to the right, that passed by where Mill's Station was afterwards built, and I think passed a little to the right of the Mud Lick. I went to the Upper Blue Lick.

WILLIAM WOOD.

Dr. Sir,

Agreeable to your request I went to see Mr. William Wood, and made the enquiry you directed me; the above statement is the substance of what he will prove on the subject.

I am, respectfully, your serv't.,

ROBERT POGUE.

I admit this deposition or affidavit of Wm. Wood to have all the weight it could as a deposition, but to rebut it I am at liberty to take Simon Kenton's deposition without notice.

WALKER REID.

The deposition of Gen'l. Simon Kenton, taken at the Clerk's office in Mason, on the 15th June, 1820, as evidence in the suit in chancery, in the Fleming Circuit Court, Thomas Bodley and others against Ambrose Walden and others. This deponent says, that ——— was the locator of John Walden's and Ambrose Walden's claims, on the waters of Johnson's Fork, and that he attended the surveys of those claims, and has been upon the land since the same was settled, and thinks the residence of the defendants, Mrs. Threlkeld, John Threlkeld, and Mrs. Thomas, late Mrs. Proctor, are within the boundaries of those two claims. He says, that he cannot now point out the improvements called for in those entries. He thinks, however, he could by examining the land and going all over it. But as to the claim of Jacob Johnston, he can say with certainty, that it was made upon the Upper Buffaloe road, leading from the Lower Blue Licks towards Limestone, and that the said road was ever since the year 1775, called the Upper Buffaloe Road, in consequence of there being two other roads branching off, all near the battle-ground, on this side of the Blue Licks, and both run-

ning towards Limestone, and crossing the North Fork below this road; this road he calls the Upper Buffaloe Road is the one, or very nearly the same leading past Clark's barn, and crossing Johnston's Fork, at the mill, but the old road crossed some distance above Clark's mill.

SIMON KENTON.

MASON COUNTY, SS.

This deposition of Simon Kenton was taken, subscribed, and sworn to, before the subscriber, at the Clerk's office in Mason county, the 15th of June, 1821, before the subscriber, a Justice of the Peace of said county.

JAS. ELLIS.

The deposition of John Rust, aged about 62 years, taken to be read as evidence in a suit in chancery in the Fleming Circuit Court wherein Thomas Bodley and Robert Pogue are complainants, and Ambrose Walden, John Threlkeld and others are defendants, taken by consent, at the house of John Faris, in Flemingsburg, on the part of the complainants. This deponent being duly sworn, deposeth and saith, that in the year 1775, as well as he now recollects, he came to Kentucky, in company with Mathew Rust, John Tibbs, Thomas Tibbs, Samuel Wells, Hayden Wells, Thomas Young, William Triplett, Jonathan Higgs, and Richard Masterson: they landed at Limestone, and explored the county, and made improvements in that neighbourhood, and on the waters of the North Fork of Licking. He recollects that there was a Buffaloe road or path which appeared to be considerably used by Indians, from the marks or sign, from Limestone Creek to the mouth of Mill Creek, on the North Fork of Licking; that the company travelled on said road, which went up Limestone Creek, and from the head of the creek across near where Gen'l. H. Lee now lives, to the mouth of Mill Creek. He has been informed, and believes, that all the company before named, except Hayden Wells, Thomas Young, and myself, are dead, and further saith not.

JOHN RUST.

MASON COUNTY, SS.

This day the foregoing deposition of John Rust was taken, subscribed, and sworn to, in due form, before me, a Justice of the Peace for said county. Given under my hand, this 6th day of September, 1820.

SALATHIEL FITCH.

"The deposition of John McIntire taken at the house of John Faris, in Flemingsburg, on the 8th day of June, 1820, to be read as evidence in a suit in Chancery, depending in the Fleming Circuit Court, wherein Thomas Bodley and Robert Pogue are Complainants, and Ambrose Walden, John Threlkeld, Proctor's heirs, and others, are Defendants. This deponent being about sixty years

of age and duly sworn, deposeth and saith, that he came to Kentucky, at Boonsborough, about the month of November, 1779, that he stayed there but a short time and then came to the north side of Kentucky River and assisted to erect Strode's Station, he first became acquainted with the Upper Blue Lick, in the fall of the year 1780, that he was with a party of men in pursuit of Indians, and travelled from the Upper Blue Lick north-eastwardly on a large Buffaloe road, to the forks of what is called Wilson's Run, and then encamped, which place he shewed to Joseph Morrison, Surveyor of Fleming County, on yesterday—at this place the roads forked, the left hand fork took of towards the Mud Lick on a branch of Johnson, and the right hand passed by Stockton's improvement where Majr. George Stockton formerly lived, near Flemingsburg, the company took the right hand road and kept on to somewhere about Cassidy's Branch, thence from the appearance of the Indian sign they concluded it was not necessary to follow the Indians any further, the company divided, and he, with others, took over to the head of Johnson's Fork and crossed the Buffaloe road that led past the Mud Lick, near where Majr. Tully formerly lived, and continued on until they struck a Buffaloe road which led to the Lower Blue Licks and went on home—He was again at the Upper Blue Licks and explored the country on the waters of Fleming Creek and over to the waters of the north fork in the year 1782 in company with Capt. John Fleming. He then travelled the left hand fork of the road aforesaid, from Wilson's Run to the Mud Lick, and was on it in several places from the Mud Lick over towards Mill Creek, and in the year 1784 he came out with a large company to survey, and became acquainted with all the Buffaloe roads in this quarter of the country. He states, there was a Buffaloe road which was large and plain from the Upper Blue Lick to the Mud Lick on the waters of Johnson, crossed Johnson's fork near where Johnson Ross now lives, and kept up the branch through Joseph Ross' plantation through the plantation where Majr. Tully lived, from there to Williams' Run, near where Charles Bell now lives, from there through Fitzgerald's place to Mill Creek, down Mill Creek to the mouth and from there, there was a road which led over towards Limestone Creek and a pathway to Dixter's camp, near Washington, which intersected the road from Mayslick to Limestone—there are to this day several places where the traces of said road are visible, some of which he has shewn to Joseph Morrison, Surveyor, this day and yesterday, who has taken a note of the same. Question by Defendants John Threlkeld, Ann Threlkeld and Jeremiah Proctor's heirs. How many roads were there, called leading roads from the Blue Licks or Lower Blue Licks to Limestone, and how would you designate them at the time you became acquainted with those Licks in 1780? Answer. There were three leading from the Lower Blue Licks to Limestone, which I became personally acquainted with in 1784. They were called the Upper Buffaloe Road, the Lower Road, and the Middle Road or Trace—the Upper Road leading by Clark's, and crossing Johnson's Fork just above Clark's

Mill I knew in 1780, having travelled it between Mayslick and Johnson's Fork to the said Licks before the year 1784, when he became personally acquainted with the Upper, Lower, and Middle Road leading from the Lower Blue Licks towards Limestone, he had heard said road spoken of by persons conversant in that quarter of the country. By same. How many roads (if any were there leading from the Upper Blue Licks to Limestone?) Answer. The road I have spoken of, crossed the north fork at the mouth of Mill Creek and led from the Upper Blue Licks, and there was another road leading from said Upper Lick passing by and crossing Fleming where Newcomb now lives, crossed Johnston below the first road, passing Mill's station and intersecting the road before it got to the mouth of Mill Creek, which empties into the north fork, this last road was not as large as the first one into which it fell, and that was near as large as the road called the Upper Road leading from the Lower Blue Lick to Limestone, and passing Johnson's Fork just above the Clark's Mill, as aforesaid. Question by same. Did you know, or ever hear, that the road leading from the Upper Blue Licks and crossing the north fork at the mouth of Mill Creek led to Limestone, or did you ever hear it called the Upper, Lower, or Middle Road leading from the Upper Licks to Limestone? Answer. I do not know where it led to after crossing the north fork. I have heard it called the road from the Upper Blue Licks to Limestone, but I never did hear of a road called the Upper Road leading from said Licks to Limestone. Question by same. Did you in the year 1784, hear, or know, any thing of Jacob Johnson's settlement and pre-emption on what is now called Johnson's Fork? Answer. I was, with John Tebbs and others, at the corner now claimed by Thomas Bodley, in March, 1784, and did understand from Tebbs, that Jacob Johnson's claim lay upon that road, and that was talked of among the companies, and three companies of surveyors met there—It is my belief, that Johnson's claim lay on the north side of Johnson's Fork, and that the creek took its name from Johnston. Were the Blue Licks and Upper Blue Licks, distinguished by those names as early as 1780, or were they called Upper and Lower Blue Licks, or how were they called and known? Answer. They were, generally, the Upper or Lower Blue Licks. Sometimes Upper or Lower Salt-Springs. Question by Complainant. Were there, or were there not, when you first became acquainted with the country—Buffaloe roads or traces, leading from both the Upper and Lower Blue Licks up the principal creeks and branches and along the ridges between Licking and the north fork? Answer. There were Buffaloe paths leading along the principal ridges and up nearly all the branches of any size, some people called them roads, but I called most of them paths. By ditto. Were, or were not, there two salt springs at the Lower Blue Licks, and were they, or not, generally called the Lower Blue Licks from your first knowledge of them? Answer. Yes, there was one on each side of Licking River, and they were generally called the Lower Blue Licks, there was but one salt spring at the Upper Blue Lick and

that on the south side of the river. By Defendants, suppose an entry had called for the Buffaloe road leading from the Blue Lick to Limestone—and to be upon the upper road from said Lick to Limestone had been shewn to you and your opinion asked of the entry, what would you give as its beginning? Answer. I should have supposed it to be on the upper road from the Lower Blue Licks to Limestone, provided it had said Licks instead of Lick. Question by Complainants. Was there not a Buffaloe road leading out to the east of what is now called Limestone Road from the Lower Blue Licks which went up the flat fork and brier fork of Johnson, and fell into the main road near Mayslick? Answer. There was, and I shewed it to Zach. Easton when making a survey in the suit Bodley, &c. against Shannon and others, and further saith not."

"JOHN McINTIRE."

FLEMING COUNTY, *ss.*

This deposition was taken and sworn to in the presence of the complainants, and Walker Reid, Esq. attorney for defendants, before me, a Justice of the Peace for said county, this 8th day of June, 1820.

"N. FOSTER."

Bodley & Co. against Taylor—In Chancery, in the Federal Court. The deposition of Michael Cassady taken by consent, this deponent saith, Question by complainant. Do you know there was a Buffaloe road, leading from the Upper Blue Lick to Limestone, and if so, what time did you acquire a knowledge of that road? I know of no principle road leading to Limestone, there was a Buffaloe road leading from the Upper Lick, which forked, one fork went past the Mud Lick on the waters Johnson's and on towards Mill Creek, my first knowledge of it was in the fall or winter, 1792. I afterwards in '89 or '90, in opening a road from my station to Mill's station, I intersected and followed that Buffaloe road, which was then plain, that road passed a little to the west of the defendants Taylor's S. E. corner, and on a direction towards Drennan's pre-emption. Question by defendant. Was not the Buffaloe road, from what is now called the Lower Blue Licks to Limestone, when you first became acquainted with it, much the largest and most direct one to Limestone which the present public road now runs nearest to? Answer. Yes. Question by same. Was there not a plainer road leading from the Upper Blue Lick, to the Ohio, than the one you first spoke of? Answer. There was one equally plain, if there was any difference as to Buffaloe sign, the first one spoken of had the preference, as it passed through the richest woods — the other was most travelled by Indians, and also called the war road, that what is now called the Mud Lick fork is not as long as the other fork, which since my knowledge of it in 1783, has been called the main fork of Johnson, by about two miles with the meanders. Were not the flat fork,

Mud Lick fork, and what is now called the middle main fork, all considered as branches only of Johnson's fork? Answer. Yes, but the middle fork was called the main fork of Johnson, and the other two had their names as early as 1784."

"MICHAEL CASSIDY."

Sworn to in Court at November term, 1804.

THOMAS TUNSTAL, *Clerk.*

"The deposition of William Stafford, taken by consent at the house of Philip Burk, in Frankfort, to be read in evidence in the suit in chancery, depending in the United States Court for the Kentucky District, wherein Thomas Bodley & Co. are complainants and John Taylor defendant, taken on behalf of the complainants. This deponent being of full age and duly sworn, deposeth and saith. Question by complainants. Do you know that there was a Buffaloe road leading from the Upper Blue Lick to Limestone, or towards that part of the Ohio, and if so, when were you first acquainted with it; Answer. In the year 1778, when coming from the Ohio, and from what he has since been informed, he believes it was near the mouth of Lawrence's creek with a party who had followed Indians, they fell into a Buffaloe road, which took them to the Upper Blue Licks, they struck the road on their left hand about five or six miles from the Lick, the road was large and plain and appeared to be a good deal used by Buffaloes, when we first struck the road we supposed it to lead to the Lower Blue Licks, and did not know to the contrary until we came near the Upper Blue Licks. Question by H. Taylor for defendants. Do you know that the road you struck five or six miles from the Upper Blue Licks went to Limestone? Answer. I do not. It went towards the Ohio, and further this deponent saith not.

W. STAFFORD.

Sworn to in open court at November Term, 1804.

THOMAS TUNSTALL, *C. K. D. C.*

Copies. Test, JOHN H. HANNA, *C. C. C. K. D.*

Articles of agreement, made and done this first day of May, one thousand seven hundred and eighty, between Simon Kenton of Kentucky, of the one part, and Ambrose Walden of Caroline County, Virginia, Witnesseth, That the said Simon Kenton doth bind himself to locate ten thousand acres for the said Ambrose Walden in the District of Kentucky in consideration of which the said Ambrose Walden doth bind himself, his heirs and assigns, to convey a proper deed of the one-third of the said ten thousand acres so located unto the aforesaid Simon Kenton, respect being held to quality and other local advantages, and lastly, both parties bind themselves to the performance of the premises under the penalty of fifty thousand pounds.

Signed, sealed and delivered in the presence of
ANGUS CAMERON,
JOSEPH CAKITE,
STEPHEN HUSTON,

"SIMON KENTON." [SEAL]
AMBROSE WALDEN. [SEAL.]

I do assign over all my right, title and interest of the within article to John Craig and Robert Johnson this 24th day of April, 1787."

"JOHN WILSON."
"JAMES TURNER."

"SIMON KENTON."

I do assign the within to Robert Johnson and Elijah Craig, Trustees for John Craig. Witness my hand, May 18th, 1791.

"TOLIVER CRAIG." "ROBERT JOHNSON."

We assign to Lewis Craig the third part of 3000 acres, entry in the name of Walden, and one-third of 3000 acres entry in the name of John Taylor, and one-third of 1500 acres in the name of William Nelson, John Craig's interest is only given up Decr. 28th, 1793.

ROBERT JOHNSON, *Trustee to John Craig.*
ELIJAH CRAIG, *Trustee to John Craig.*

A Copy. Test, JNO. H. HANNA, *C. C. C. K. D.*

The deposition of Lewis Craig, Jr., taken this 27th August, 1823, at the office of Jno. H. Hanna, Clerk of the United States Circuit Court for the Kentucky District in Frankfort, to be read as evidence in a suit in chancery, depending in the Fleming Circuit Court, wherein Thomas Bodley and Robert Pogue are complainants, and Ann Threlkeld and others are defendants. The deponent being of lawful age and duly sworn, deposeth and saith, That he hath examined the original writing and assignments thereon, (of which the foregoing is a copy,) filed in the Federal Court office, and hath no doubt that the assignment of 18th May, 1791, and of Decr. 28th, 1793, are in the hand-writing of Robert Johnson, and that the signatures of Robert Johnson and Elijah Craig are each in their own hand-writing, and hath often seen them write. That he hath compared the foregoing copy with the original, and it is truly copied, and further saith not." "THOMAS CRAIG, Jr."

The deposition of William S. Waller taken the same time and place to be read as evidence in the same suit. The deponent being of lawful age and duly sworn, deposeth and saith, that he hath also examined the agreement and assignments mentioned in the deposition of Lewis Craig, Jr. and hath no dobt that the signatures of Robert Johnson are in his own hand; he hath seen him write frequently, he hath seen writings purporting to have been written by Elijah Craig, and from a comparison of hands he hath no doubt that the signature of Elijah Craig to the last assignment is in his own hand. He hath

compared the foregoing copy with the originals and finds them truly transcribed. And farther saith not.

WILL. S. WALLER."

FRANKLIN COUNTY, ss.

The foregoing depositions of Lewis Craig, Jr. and William S. Waller were taken, subscribed and sworn to before the subscriber, a Justice of the Peace for said county, the time and place set forth in the caption.

Given under my hand this 27th of August, 1823.

J. SURGERT, *J. P.*

"The deposition of John Kercheval of lawful age, taken at the house of John Faris, in Flemingsburg, on the 8th day of June, 1821, to be used as evidence in a suit in chancery depending in the Fleming Circuit Court, wherein Thomas Bodley and Robert Pogue are complainants, and Ambrose Walden, Threlkeld and others are defendants. This deponent being duly sworn deposeth and saith, that he has examined a power of attorney from Robert Rutherford, John Peyton and Charles Magill to Buckner Thruston, dated the 5th day of October, 1798, upon which this deponent has subscribed his name that he is well acquainted with the said Rutherford of Berkley county, Peyton and Magill of Winchester, Virginia, and has frequently seen them write, and he is well satisfied and positive, that the signatures to said power of attorney is in the hand-writing of the said Rutherford, Peyton and Magill, severally; Rutherford was a conspicuous character in that section of country, Peyton was Clerk, and Magill an Attorney, this deponent acted as Deputy Sheriff in Frederick County for about 10 years, and was as well acquainted with the hand-writing of those gentlemen, as with that of any person of his acquaintance, and further this deponent saith not.

"JOHN KERCHEVAL."

FLEMING COUNTY, ss.

The above deposition was sworn to before me a Justice of the Peace for said county, by John Kercheval in due form, June 8th, 1821.

"HENRY BRUCE."

Upon which deposition is the following, to wit: "I admit this deposition, and the complainants allow the defendants to take Simon Kenton's and D. V. Payne's deposition to be taken without notice, to prove if they can, that they hold under Walden's claim, and the complainants admit that the defendant's land sued for is within Walden's patent as laid down on the platt."

WALKER REID,
For Defendants.

"The deposition of Hadon Wells, taken at the Court House in Montgomery County, State of Tennessee, this 15th day of July, 1805, and to be used in evidence in a suit in chancery depending in the Mason Circuit Court, in which Alexander K. Marshall is complainand and Thomas Young is defendant. This deponent being first sworn deposeth and saith, that in the year 1775, he in company with Samuel Wells, Richard Masterson, William Triplett and others, descended the Ohio and landed at the mouth of Limestone, for the purpose of exploring and improving the land in that neighbourhood, that he with a part of the company took the path and went up the river hill at Limestone, and found a plain path to the North Fork which path crossed at the creek that we called Wells' Creek, now called Mill Creek, we then returned to Limestone, and some time after, about two weeks, we made a survey, and as we returned from the North Fork we went into the aforesaid path and found the trail of a large party of Indians going towards our camp at Limestone, and when we came to Limestone we found they had crossed the Ohio at Limestone, and when we went out at the mouth of Wells' Creek, now called Mill Creek, we found that the Indians had crossed at that place, and that the boys at the camp told me that the Indians told them that the came from the Lower Blue Licks, and that they had been out in that woods ever since the leaves first put out, and I was told, I think by William Triplett and Samuel Wells, that in the year 1776 that there was a party of Indians crossed at the mouth of Mill Creek whilst they stayed there in camp. Question 1st, by defendant. If you had been asked by any person where the Indians crossed the North Fork that lead from Limestone to the Lower Blue Licks, would you direct them to Mill Creek or to Lee's Creek? Answer. I should have directed them to Wells' Creek now called Mill Creek, for I did not know any at Lee's Creek neither did I know Lee's Creek. 2d. By same. Is not paths that is travelled by Indians out of the settlement such as the one you spoe of, commonly called war paths or roads? Answer. Yes, they — Question 3d, by the same. What was your opinion of that road in the year 1774? Answer. I believe it was a road travelled by the Shanee and Delaware Indians."

"HAYDER WELLS."

Test, JAMES STEWART,
J. P. Montgomery County.

Upon which deposition is the following, to wit:

"This deposition may be used as evidence in the suit Bodley & Pogue against Walden, &c., and to have the same effect as if taken in said suit. REID, *for Defts.*"

"The deposition of Bartlett Fitzgerald, of full age, taken at the house of Johnson, and to be read in evidence in the suit in chancery depending in the Circuit Court of Mason, in which Alexander K. Marshall is complainant, and Thomas Young is defendant. This deponent being first sworn, says he first became acquainted with

the North fork of Licking at the mouth of Mill creek, in the year 1775, that at that time there was a Buffaloe road crossed at the mouth of Mill Creek, but it was not a war road, it had no marks or appearance of Indian camping grounds on it, and this deponent being directed by the company to point out the place proper for improvements, did so, and in making those selections made the first marks which were on the creek called Mill Creek. He is uncertain where the northern end of the Buffaloe road led to, but he pursued the southern end as far as the forks of Mill Creek; he has ascertained that the right hand fork of said road led to the Upper Blue Licks, and the left hand fork led up the said Mill Creek to about where Stockton settled, and this deponent was among the first that settled on Mill Creek. This deponent further says, that below the forks of the road where this deponent lives, and is above spoken of, the said road forked again, and the right hand fork went over to the feeding grounds between Pogues and Mayslick, where it was wasted and lost. The said last mentioned fork was about three quarters of a mile from the mouth of Mill Creek. Question, by Captain Young:—At what time were you acquainted with the place now called Mayslick? Answer.—In January or February, 1796, tho' it was not then cold Mayslick. I was acquainted in the neighbourhood, tho' not with the spot in that year; I was acquainted with Haydon's Big Spring, where Shotwell's spring-house stands, not far from the Lick. Question. Did you ever know of a spring at Mayslick? Answer.—I never knew of any spring but Haydon's Spring. Question, by same.—Did you ever hear that spring called May's Spring? Answer.—I never did. It has always been called Haydon's Spring; and further this deponent saith not.

"BARTHOLOMEW FITZGERALD."

The deposition of Major George Stockton, taken at the house of George Farres, in Flemingsburg, Fleming County, on the 11th day of May, 1810, between the hours of nine in the morning and six in the evening, to be read as evidence in a suit depending in chancery in the General Court, wherein Robert Morrison and others are complainants, and the heirs of Thomas Coghill, deceased, and Edwin Hord are defendants. This deponent (being first sworn) deposeth and saith, that he was at the mouth of what is now called Mill Creek in the year 1776, and knows that there was a large trace which crossed the North Fork of Licking, at the mouth of said creek, but at that time this deponent knew no particular name attached to Mill Creek, which he never knew by that name until the year 1784. This deponent can state that the trace aforesaid, which crossed immediately below the mouth of said creek, was large in 1776, and from thence to the mouth of Limestone, which was at that period a noted landing-place. This deponent will further add, that he knew Johnson's Fork of Licking by that name in the year 1784, and not before. This deponent will further add that the trace aforesaid was marked with blazes and chops on the trees, and

this deponent understood subsequently, to wit, as early as June, 1784, that the said trace was known by the name of a war road, and further saith not.

"GEORGE STOCKTON."

Fleming County, ss.

The foregoing deposition was taken before us, the subscribers, two of the Commonwealth's Justices of the Peace for said County, agreeable to notice herewith filed, and as stated in the foregoing preamble. Given under our hands, this 11th day of May, in the year 1810.

WILLIAM P. FLEMING, *J. P. F. C.*
EDWD. DORSEY, *J. P. F. C.*

Upon the back of which deposition is the following, to wit: The foregoing deposition of Bartl. Fitzgerald and George Stockton are to be read as evidence in the suit Bodley, &c., against Walden, &c., and to have the same effect as if taken in said suit.

"REID, *for Defendants.*"

The depositions of sundry witnesses, taken at the house of B. B. Stith, in the town of Washington, Mason County, agreeable to notice, on the 22d day of November, 1816, to be read as evidence in the suit in chancery depending in the Fleming Circuit Court, wherein Thomas Bodley is complainant, and Ambrose Walden, John Threlkeld, and others, are defendants, taken by the complainants.

David Blanchard, of lawful age, being duly sworn, deposes and says that, about the latter part of the month of June, in the — 1783. He went out from Lexington, in company with John Tebbs, John Clarke, and Alexander McClain, and on a Buffaloe road leading from the Lower Blue Licks towards Limestone, he saw John Tebbs mark a large ash, and small buckeye trees with the letters I T for the beginning of an entry of 20,000 acres, which said trees stood on the main Buffaloe road, leading from the Lower Blue Licks to Limestone, about one and a half miles north eastwardly from where the said road crosses Johnson's fork of Licking, and about 20 or 30 feet in front of the house where Mrs. Nicholson, commonly called the big widow, lived: and has since been occupied by John Vanoy, and is the place as he is informed, represented on the connected plat to be used in this suit by the letter A.

That the said letters I T were large and plain, and the trees stood in a conspicuous place. This deponent says he is positive as to the place, on account of his having got water out of a remarkable sink hole, near where the trees stood, he says he was again at the said trees, when John Tibbs began to make the survey therefrom, in March, 1784, and the survey of 20,000 acres was then made, and the lines and corners plainly marked. This deponent says that at the time the trees were marked, the party called a branch of Johnson's fork, which they crossed in going over the land, McConnell's fork. This deponent says these trees were generally known to those

who passed along said road, they stood almost in it, he has passed by them in company since they were marked, some years, as often as ten times in a year, and generally observed to those in company, while they stood, there is Tebbs and Co.'s beginning.—This deponent says he has no interest, either for or against the establishment of this beginning: some years ago he sold out his interest to Thomas Bodley, and the purchaser released him from all responsibility, which release is of record in the clerk's office of Mason County, and an attested copy thereof, is referred to as part of this deposition, and whether the land is obtained or not, he is not liable in any way. This deponent says, he has always understood that the Lower Blue Licks has been a place of great notoriety, ever since the battle fought near it, between the white people and the Indians, in the year 1782, which has always been spoken of as the battle of the Blue Licks. Question by complainants. Have you not understood and believe that all the persons who were with you when the I T trees were first marked are dead, and that Mathew Walker, who once gave his deposition at said beginning, when taken to perpetuate testimony is also dead? Answer. Yes. Question by ditto. Have you ever seen any other ash and buckeye trees marked I T standing on a Buffaloe road N. Eastwardly of the Lower Blue Licks? Answer. No, and further this deponent saith not.

DAVID BLANCHARD.

Henry Lee, of lawful age, being duly sworn, deposes and says that, about the month of March, 1784, he came from Lexington to the place described in the foregoing deposition of David Blanchard, as the beginning corner of Tebbs and Co.'s 20,000 acre entry, in company with John Tebbs, David Blanchard, Alexander McClain, and several others, that there was then on the ash, which stood as described in said deposition, the letters I T, apparently marked with a tomahawk, and als a buckeye, about a foot in thickness, which stood about 10 or 12 feet from the ash, also marked with the same letters, that they encamped near the place, and the next morning John Tebbs began a survey, and marked the trees as a corner, which he understood was the survey of their entry of 20,000 acres. This deponent is positive as to the place where the trees stood, having frequently travelled the road, and generally noticed the trees whilst standing, and the place where they stood since they were cut down. This deponent says that the said trees, stood on the main Buffaloe road leading from the Lower Blue Licks to Limestone, a north-eastwardly course, which road was generally travelled by those who passed through this part of the country. This deponent says the letters on the trees were large, the trees stood in a conspicuous place, and the letters appeared as if the might have been cut the summer before he first saw them. This deponent says he has always understood that the Lower Blue Licks was a place of great notoriety, ever since the battle fought near that place, between the white people and the Indians, in the year 1782, which has been generally spoken of as the battle of the Blue Licks. Upon being

interrogated by the complainant. The deponent says that when he was first at the I T trees, when Tebbs began to make the survey of 20,000 acres, there were present John Tebbs, — this deponent, Richard Masterson, and he thinks William Howard, all surveyors with their companies, he believes in all 15 or 16 in number. He thinks Tebbs & Co.'s claim of 20,000 acres was notorious and well known to those conversant in that part of the country, from March, 1784, when the survey was made, it was frequently spoken of, and he found the northwardly boundary of said survey, where it crossed the Limestone road pursued it to the N. E. corner, and found it plainly marked—He has understood, and believes that Mathew Walker, who gave his deposition at said beginning corner, when depositions were taken to perpetuate testimony, is dead. He has never seen any other ash and buckeye trees marked I T standing on a Buffaloe road leading from the Lower Blue Licks a northeastwardly course, and further this deponent saith not.

"H. LEE."

"Duvall Payne, of lawful age, being duly sworn, deposes and says that he was employed by Thomas Bodley to make a survey of 16000 acres on Tebbs and Co.'s entry of 20,000 acres in the year 1796; that he began the survey about 20 feet from the door of Mrs. Nicholson, on the road leading from Limestone to the Lower Blue Licks, in which house John Vanoy has since lived and is more particularly described in the foregoing deposition of David Blanchard, and ran north, which course ran over the chimney of the house, and in running the line, he found an old line plainly marked the whole distance, and near a horse mill, the place is now in Alexander Dougherty's field, he found an ash and honey-locust trees, plainly marked as corner trees, which he was then informed had been marked as a corner for said 20,000 acres, and for other surveys which called to adjoin it, and he called for the same trees, as the corner of the 16,000 acre survey which he then executed. This deponent says that in the fall of the year 1789, he arrived in this country with his family, he travelled along said road and saw one of the trees with the letters I. T. upon it, at the place where he afterwards began the survey, being shown the same by Thomas Young, and he saw the trees a dozen of times afterwards."

"D. V. PAYNE."

MASON COUNTY, ss.

The foregoing depositions of David Blanchard, Henry Lee, and Duvall Payne, were subscribed and sworn to at the time and place therein stated: Blanchard and Lee's before D. V. Payne and said Payne's before Robert Pogue. Given under our hands and seals as justices of the peace for said county, this 22d day of November, 1816."

D. V. PAYNE. [SEAL.]
ROBERT POGUE. [SEAL.]

The depositions of sundry witnesses taken at the clerk's office of

Fayette Circuit Court in Lexington, on Saturday, the 2d day of May, 1812, to be read as evidence in a suit in chancery, now depending and undetermined in the Mason Circuit Court, wherein Thomas Bodley and James Hughes are complainants, and Hugh Shannon and others are defendants; commenced about the hour of three o'c. in the afternoon, taken on the part of the complainants, (no person attending on the part of the defendants,) agreeable to notice produced. John Baker, of full age, being duly sworn, deposeth and saith, That about the last of November, 1784, when travelling from Limestone to Lexington, in company with James Parker, he thinks Richard Masterson and others, not now recollected, he was shown by the said James Parker or Masterson, or some of the company, an ash and buckeye trees marked with the letters I. T. standing on the Buffaloe road which is now called the Limestone road, about a mile and a quarter, or a mile and a half, N. E. wardly of where the Limestone road crossed Johnson's fork, which he was then informed by the company, was the beginning corner of John Tebbs and Company's large entry or survey, that he noticed the trees particularly, because his brother James Parker had made a purchase of part of John Clark's interest in said claim for one of his sisters; he well recollects that the trees were plainly marked with the letters I. T. pretty large, but he cannot say whether the ash was a black or blue ash, not being at that time well acquainted with the different species of ash, and not now recollecting particularly the kind of ash tree the letters were marked on, but it appeared to him it was well known to some of the company as Tebbs and company's beginning. He travelled the road several times afterwards, and always noticed the trees, but does not recollect to have seen them after an improvement was made near where they stood. He well recollects the situation and appearance of the ground, and is confident the trees stood near a place which was afterwards generally called the big widow's. Question by the complainant: Were you acquainted with John Tebbs, John Clarke, John Sharp, Alexander McClain, and Mathew Walker all of whom formerly resided in or near Lexington, and do you know or have you heard that all or any of them are dead, if so, state which of them, and all you know on the subject? Answer. I was acquainted with all the men above named, except John Sharp, in 1784, I have heard and always understood that Tebbs died in Lexington many years ago, that John Clarke died at Cincinnati, Ohio, and that Walker died at the mouth of Kentucky River, some 8 or 10 years —. I have heard that McClain is dead, but do — know when or where he died, and further this deponent saith not.

"JNO. PARKER."

FAYETTE COUNTY, ss.

The foregoing deposition of John Parker was subscribed and sworn to before me a Justice of the Peace for said county, at the time and place stated therein, according to law.

Given under my hand this 2d day of May, 1812."

"RICHARD HIGGINS."

Also the deposition of Richard Sharp, of full age, taken at the same place, to be read as evidence in the same suit, taken on the part of the complainants the 11th day of May, 1812. This deponent being sworn, deposeth and saith that about the month of June, 1792, he was shewn an ash marked with the letters marked I.T. standing on the Limestone road, about a mile and a quarter from Johnston's fork, and in front and near a cabbin which he was informed was the beginning of a survey of 20,000 acres in the name of John Tebbs, John Clarke, John Sharpe, Alexander McClain and David Blanchard, and as his father John Sharpe was interested in the survey, he examined the trees particularly, and is positive that the ash tree which was marked with the letters IT large and plain, was a *black ash*. He further saith that his father John Sharpe, has been dead since the year 1807, he does not recollect seeing a buckeye marked I.T. at the place, at that time—and further, this deponent saith not."

"RICHARD SHARPE."

FAYETTE COUNTY, ss.

The foregoing deposition of Richard Sharpe was this day subscribed and sworn to, before me a Justice of the peace for said county, in due form this 11th day of May, 1812."

"RICHARD HIGGINS."

"STATE OF OHIO, *Montgomery County*, ss.

Before me John Tolkerth, one of the Justices of the Peace in and for the County aforesaid, came Christopher Curtner of lawful age, who being sworn according to law, deposeth and saith, that in the winter and spring, 1784, this deponent set out from Lexington with John Tebbs, William Howard and others, to execute some surveys on entries before that time, made by the said Tebbs and others, as this deponent understood, which lay N. E. of the Lower Blue Licks, they travelled along a large Buffaloe road, and after crossing Johnston's fork they came to the trees called for in Tebbs and company's entries. This deponent understood it was somewhere about four miles from this beginning corner to Mayslick on the same road, which was the road generally travelled from Lexington to Limestone. This deponent was one of William Howard's chainmen, and assisted to survey as he understood a twenty thousand acre tract for John Tebbs and others, which began at the before described corner, and another of five thousand acres beginning at the same place, but this deponent does not recollect what trees were marked. Question by complainants. Did you or the company then know the difference between a black and blue ash? Answer. Yes. Question by complainants. Are you or are you not positive that the ash tree was a black ash. Answer. I cannot recollect what kind of wood the corner trees were. I was a boy at that time. Question by ditto. Who were in company with you at the time of making the said surveys, state the names of those you recollect? Ans. William Howard,

and another surveyor (I think John Tebbs,) with their companies were together and encamped at the beginning corner, I think David Blanchard and Alexander McClain were of the company. Question by the complainants. Have you not understood, and believe that John Tibbs, John Clarke, John Sharpe, Alexander McClain and Mathew Walker are dead? Answer. Yes, I have understood so. Question by ditto. Are you not positive that the trees you began to survey, Tebbs and Companies entry from answered the description given in the entry and were correctly reported by the surveyor in his certificate of survey? Answer, I cannot recollect the kind of tree but think one was marked IT. I am of opinion the trees answered the description given in the entry, and that the surveyor certified a correct return of the same, I understood the five thousand acre tract before spoken of was surveyed by us for John Fowler, and further, this deponent saith not.

"CHRISTOPHER CURTNER."

Sworn to and subscribed at the house of David Reid, in the town of Dayton, and county and state aforesaid, on Saturday the 9th day of May, 1812, about the hour of 11 o'clock in the day time, to be read as evidence in a suit in chancery now depending and undetermined in the Mason circuit court, state of Kentucky, wherein Thomas Bodley and James Hughes are complainants, and Hugh Shannon and others are defendants, taken on the part of the complainants before me.

JOHN TOLKERTH, *J. P.*

Copies. Attest, FRANCIS TAYLOR, *C. M. C. C.*

The deposition of Gen. Henry Lee, taken at the house of Balwin B. Stith, on Friday the 15th instant, to be read as evidence in a suit in chancery depending in the Fleming circuit, wherein Waller Overton and William Howard are complainants, and William P. Fleming and others are defendants. The deponent being aged about fifty years and first duly sworn, deposeth and saith, and adjourned until Saturday morning next, according to adjournment, and the deponent saith, That about the month of March, 1784, he in company with John Tebbs, David Banchard, Alexander M'Clain and several others, went to the place of beginning of Tebbs & Companies 20,000 acres, and also the beginning of Tebbs and Crutchers 10,000, an ash and buckeye marked with the Letters I. T. standing on the Buffaloe road lead from the Lower Blue Licks to Limestone, about one and a half miles from where the Buffaloe road crossed Johnson's fork of Licking, about 20 or 30 feet in front of the house where Mrs. Nicholson formerly lived, and he is informed that it is now occupied by Thomas Fulcher. The letters I. T. were apparently cut with a tomahawk, large and conspicuous easily and plainly to be seen by any person passing the road, that the company encamped near the place, and the next morning John Tebbs began a survey and marked said trees as a corner, which he understood was the survey of their entry of 20,000 acres — This deponent states he has heard that John-

ston's fork was also called M'Connell's fork. This deponent is positive as to the spot where the trees stood, having frequently travelled the road, and generally the trees whilst standing (which are now down) and the place where they stood since they were cut down. This deponent further states, that the Buffaloe road aforesaid, lead out from the Lower Blue Licks, a north eastwardly course, which was the road generally travelled by those passing through that part of the country to Limestone. This deponent states the letters on both trees were plain, the trees stood in a conspicuous place, and the letters appeared as if they had been cut the summer before he first saw them.

This deponent states, that he has always understood and believes, that the Lower Blue Licks was a place of general notoriety, ever since the memorable battle fought near that place between the whites and Indians, in the year 1782, which has been generally spoken of as the battle of the Blue Licks, and further saith not.

Signed, H. LEE.

Also Col. Duvall Payne, being first sworn, deposeth and saith, that in the year 1789, in travelling in company with Capt. Thomas Young, on the Buffaloe road leading from the Lower Blue Licks to Limestone, that on the road Thomas Young showed this deponent an ash and buckeye, marked with the letters I. T. on the side of said road, which were then plain and conspicuous, and had an ancient appearance, which he was informed was the beginning of Tebbs and Co.'s entry of 20,000 acres, and since that time he did execute a survey on said entry; this deponent is positive as to the place where the trees stood, having passed the place often while they were standing, it being on the Buffaloe road leading from the Lower Blue Licks, a north eastwardly course, about seven miles and some poles, near the house formerly occupied by Mrs. Nicholson, and now by Mr. Thomas Fulcher. Question by complainants. In executing the survey on Tebbs and company's entry, in the year 1796, did you not follow and find a marked line, and corner corresponding, for the line and corner of the survey upon said entry? Answer. I did — two corners and two lines — and further saith not.

Signed, D. V. PAYNE.

Also the deposition of Capt. John Fowler, of lawful age, who being first sworn, deposeth and saith, that on or about the first of January, in the year 1784, at the Fayette court, in the town of Lexington, he became acquainted with John Tebbs, and the inhabitants generally, and at the court aforesaid he was qualified deputy surveyor, under Col. Thomas Marshall; during the winter and spring of said year he was frequently in company with Tebbs, and other deputy surveyors, when the general subject of conversation turned upon locating lands. The said Tebbs frequently spoke of a large body of excellent lands he and his company had discovered, where he had made entries to a considerable extent. Beginning with an entry in the name of himself and others, for 20,000; at the same

time exhibiting a connected platt, showing the locations he and his company had made adjoining the 20,000 acres aforesaid, and made this deponent a compliment of two locations of 500 acres each, about the latter end of February or first of March following. This deponent was employed — Colonel Thomas Marshall, as chief clerk in his office, as surveyor, and early in March, this deponent entered for himself two locations of five thousand acres each, before spoken of, and given him by Tebbs. This deponent states, that as well as he recollects, he saw the trees said to be marked as the beginning of Tebbs and Co.'s on the Buffaloe road leading from the Lower Blue Licks a north eastwardly course to Limestone, to wit, a buckeye and ash, which was then plainly marked with the letters I. T., in the month of November, in the year 1784, and from the appearance he supposes was marked the year before. Question of complainants. Was not the beginning of Tebbs and Co.'s entry of 20,000 acres become a place of considerable notoriety as early as the winter and spring 1784? Answer. The entry of Tebbs and his beginning was frequently spoken of in the surveyor's office as early as that period of time. By same. Would you suppose there would be any difficulty of finding the beginning of Tebbs and company's entry of 20,000 with the aid of entry? Answer. I do not, with reasonable search; and further saith not.

Signed, JOHN FOWLER.

Also David Blanchard, of lawful age, and being first duly sworn, deposeth and saith, That about the latter part of the month of June, 1783, he went in company with John Tibbs, John Clark, Alexander McClain, and himself: from Lexington, and on a Buffaloe road leading from the Lower Blue Licks to Limestone, he then saw John Tebbs mark an ash and buckeye with the letters I T for the beginning of an entry of 20,000, which said trees stood on the main Buffaloe road leading from the Lower Blue Licks to Limestone, about one and a half miles north-eastwardly from where the said road crossed Johnson's fork of Licking, and about 20 or 30 feet in front of the house where Mrs. Nicholson formerly lived, now occupied by Thomas Fulcher, that the said letters were large and plain, that the trees stood in a conspicuous place, easily to be seen by any person passing the road, and in search of landmarks. This deponent is positive as to the place, on account of his having encamped near it, and got water out of a remarkable sink-hole, near where the trees stood. He also states he was again at the trees, when John Tebbs made a survey thereon in March, 1784. This deponent states at the time the trees were marked, the company called Johnson's fork, which they crossed in going over the land, McConnell's fork. This deponent states these trees were generally known to those who passed along the Buffaloe road. They stood almost in it. He has passed by them often in company since they were marked, some years as often as ten times in a year, and generally observed to those in company whilst they stood, "There is the beginning of Tebbs & Co." This deponent states he has no interest either for or

against the claim, having sold his interest and obtained a release upon the sale, which is recorded in Mason County. This deponent states that he has always understood the Lower Blue Licks to have been a place of great notoriety, ever since the battle fought near it between the white people and the Indians in the year 1782. This deponent further states, that the aforesaid Buffaloe road which passed by the I T trees, was the one generally travelled by persons passing thro' this part of the country, and that he believes the trees aforesaid *was* well known as the beginning of Tebbs & Co. to all those who were conversant in that part of the country.—They standing immediately on the road, and having frequently myself *having* spoken with others on the subject of the beginning, and further saith not.

"DAVID BLANCHARD."

Mason County, ss.

The foregoing depositions of Genl. Henry Lee, Capt. John Fowler, Duval Payne, and David Blanchard, *and* were severally taken, sworn to and subscribed in our presence at the house of B. B. Stith, in the town of Washington, on the 15 and 16 instant. Given under our hands and seals *a* Justices of the peace this 16th Novr. 1811.

"Signed" D. V. PAYNE."
J. BROWN."

The deposition of Col. A. D. Orr, taken at the house of A. D. Roberts, at Mayslick, on Monday, the 18th November, 1811, taken to be read as evidence in a suit in Chancery, depending in the Fleming Circuit Court, wherein Waller Overton and William Howard are complainants, and John Hood, John Gallagher and others are defendants. This deponent being of lawful age, and first duly sworn, deposeth and saith, that in the spring of 1784, he was travelling the Buffaloe trace leading from the Lower Blue Licks to Limestone, in company with Richard Masterson, Caleb Masterson, William Farrow and others, when this deponent was shewn an ash tree and buckeye marked with the letters I. T. by the said company, and was informed that — the beginning of Tebbs & Co.'s 20,000 acre entry. This deponent states the letters were plain, and the trees stood in a conspicuous place, on the side of said road, easily to be seen by any person passing that way, that they were near the house late in the occupancy of Mrs. Nicholson. That the I. T. trees were situate upon the road, which was the usual and common one travelled between the Lower Blue Licks to Limestone, and lead out from the said Licks a northeastwardly course. This deponent states that he has heard what is now called Johnson's fork, called McConnell's fork. Question by complainants. If the entry of Tebbs & Co. of 20,000 acres had been placed in your hands at the Lower Blue Licks. Do you not believe you could have found the place of beginning by the aid of said entry, in the spring of year 1784, with

using reasonable search? Answer. I believe I could. By same. Was not the I. T. trees as the beginning of Tebbs & Co.'s entry of 20,000 acres frequently spoken of in that year, to wit, 1784, and the year before, as a place of considerable notoriety, by all persons acquainted in that part of the country? Answer. They were spoken of by Tebbs & Co. in 1783, and in 1784 they were spoken of generally, as a place of considerable notoriety. By same. From the appearance of the letters upon the buckeye and ash, Do you not suppose they were made the year before you first saw them? Answer. I do; Tebbs had told me the fall before, that he had marked them and made locations, beginning at that place. By same. Was not the Lower Blue Licks considered as a place of considerable notoriety as early as 1783? Answer. Yes. And further saith not.

Signed "A. D. ORR."

Mason County, ss.

The foregoing deposition of Col. A. D. Orr, was taken before us, the subscribers, Justices of the Peace for the County aforesaid, at the time and place first mentioned. Given under our hands this 18th November, 1811.

Signed "JAMES MORRIS."

The deposition of Capt. Thomas Young, taken at the tavern and Inn of Z. Moore, in Paris, on Wednesday, the 26th February, in the year 1812, to be read as evidence in a suit in Chancery, depending in the Fleming Circuit Court, wherein Howard and Overton are complainants, and Randall Leas, John Gallagher and others are defendants, the deponent being of lawful age, and first duly sworn, deposeth and saith, that he visited Kentucky in 1773, 1775, 1781, 1783, and settled himself in 1784. That in the fall of the year 1783, he was informed by Tebbs and Clark that they had marked a buckeye and ash with the letters I. T. which stood on the Buffaloe road, leading out from the Lower Blue Licks, a northeastwardly course, and also informed this deponent, that these trees were the beginning of an entry of 20,000, in the name of Tebbs, Clarke, Blanchard, &c. and also of Tebbs and Crutcher of 10,000 and that in the month of January, 1784, following, the deponent, in passing the Buffaloe road leading from Limestone to Lexington, was shewn the trees by David Blanchard, that the letters I. T. were then large and plain on both the trees. The trees stood in a conspicuous place, both or one of them standing in the road, and had the appearance of having been marked some time before, and has ever since known the aforesaid trees as the beginning of the aforesaid entries of 20,000 acres and 10,000 acres. This deponent states he believes the I. T. trees were notoriously known to all those conversant in that part of the country, or to those who travelled said road as the beginning of the aforesaid entries, having passed the trees in the summer 1784, in — large company, when the trees were noticed

and spoken of as the beginning aforesaid. This deponent states, that some time afterwards he shewed the aforesaid — to Col. Duvall Payne, he believes in the year 1789, that the Lower Blue Licks was a place of great notoriety in the year 1782, and ever since. This deponent further states, that what is now called Johnson's fork, in the year 1783-4, he often heard called McConnell's fork. Question by complainant. Do you not believe that with the aid of the entry at the Lower Blue Licks, any person in search of the I. T. trees, could not have found them in the year 1783? Answer. I think they might. By same. Had you been in search of the beginning aforesaid, and came to the before recited I. T. trees, would any doubt have remained in your mind of that being the place of beginning of the aforesaid trees? I should not hesitate to have believed that was the place of beginning, and further saith not.

Signed "THOS. YOUNG."

BOURBON COUNTY, ss.

The foregoing deposition of Capt. Thomas Young was taken before us the subscribers, justices of the peace for the County aforesaid at the time and place first abovesaid mentioned. Sworn to and subscribed in our presence.

Given under our hands and seals this 26th February, 1812.

"Signed" "THOMAS HUGHES. [SEAL.]
THOS. JONES. [SEAL.]

NICHOLAS CIRCUIT, ss.

The foregoing depositions are truly transcribed from the originals, filed in my office in the suit therein mentioned.

Att. LEWIS H. ARNOLD, *Clk.*

The deposition of John Gallagher, to be read in evidence in the suit, in Chancery, depending in the Fleming Circuit Court, in which Thomas Bodley, &c. are complainants: Ann and John Threlkeld, the heirs of Jeremiah Proctor and others, are defendants. This deponent, aged about sixty years, being first duly sworn, deposeth and saith, That a certain Andrew Kincaid settled the farm in controversy in this suit, which is claimed and possessed by the representatives of Jeremiah Proctor. That the said Andrew Kinkead settled on and commenced the improvement on the tract of land in the winter of the year 1795-6, perhaps after the commencement of the year 1796. This deponent further saith Kinkead continued in possession of the tract of land until he sold it to Jeremiah Proctor, who purchased it and took possession of it as soon as Kinkead moved off, and continued uninterruptedly to possess and reside upon it until his death, and his wife and children have retained the possession ever since. This deponent has resided in the neighbourhood of the land ever since Kinkead settled there, and he *as* never heard or known of any interruption in the possession of Kinkead or the Proctors. But that a man by the name of Lucas occupied it under Proctor for about

one year, soon after Proctor purchased of Kinkead, and then Proctor came into possession, and continued it as aforesaid. This deponent further saith that he has always understood that the said tract of land settled by Kinkead, and sold by him to Jeremiah Proctor, contained about one hundred and fifty acres; and further saith not.

"JOHN GALLAGHER."

The deposition of William Summers, taken at the same time and place, and for the same purpose as the foregoing deposition of John Gallegher. This deponent, aged about sixty-three years, and being first duly sworn, deposeth and saith, that in the year 1794, the defendant Ann Threlkeld, purchased the tract of land in controversy in this suit, on which he now resides, and in the Spring of that year (early in the Spring,) took possession of it and commenced improving it, and in the course of that year built a hewn log house on it, and has remained uninterruptedly in the possession of it ever since. This deponent further saith, that the said defendant Ann Threlkeld purchased the said tract of land of Lewis Craig, of Mason County, and this deponent is a subscribing witness to the title bond given by Craig to the said Ann Threlkeld for the said tract of land. This deponent further saith that the defendant John Threlkeld, settled upon a part of the tract of land purchased by Ann Threlkeld of Craig as aforesaid, as this deponent always understood, and purchased a small part of it of her, and this deponent cannot recollect certainly the time at which John Threlkeld commenced his improvement, but he knows that within a few years after Mrs. Ann Threlkeld settled, and this deponent thinks certainly not exceeding five years, he (the defendant John Threlkeld,) settled upon the land in controversy in this suit, on which he now lives, and has had it in his possession ever since, and further saith not.

"WILLIAM SUMMERS."

FLEMING COUNTY, SS.

The within deposition of John Gallagher and William Summers were taken, subscribed and sworn to before the undersigned, one of the Justices of the Peace for the county aforesaid, at the Clerk's Office in Flemingsburg, on the 5th day of September, 1821.

Given under my hand.

"HENRY BRUCE."

The deposition of Jonathan Rose to be read as evidence in a suit in chancery, depending in the Fleming Circuit Court, in which Thomas Bodley and others are complainants and Ann Threlkeld and others, defendants. This deponent, aged about sixty-seven years, and first duly sworn, deposeth and saith, that he is well acquainted with the land in controversy in this suit, now in the occupancy of Ann Threlkeld, John Threlkeld, Mary Thomas, late Mary Proctor, widow of Jeremiah Proctor, deceased, and he knows that Ann Threlkeld where she now lives, in the latter part of the year 1794, or early part

of the winter 1795, having purchased of Lewis Craig about one hundred and twenty-five acres as he this deponent thinks, of the land, part of which her son John Threlkeld settled some few years afterwards, and they have remained in the undisturbed possession of the land ever since, claiming it under the purchase from Craig, as this deponent has always understood, and further saith not.

"JONATHAN ROSE."

The deposition of William Moss taken for the same purpose as the foregoing deposition of Jonathan Rose. This deponent, aged about years, and being first duly sworn, deposeth and saith. That he removed from Loudon County, in Virginia, in the fall of the year 1794, and came to this country in November, or early in December of that year and of that time, he went into a house with his family in which the defendant Ann Threlkeld resided, under a lease which she had taken for about four years, on the land of William Summers, which lease this deponent purchased of William Threlkeld, and she (the widow) with all her family removed to the land in controversy in this suit where she now resides, of which she took possession late in December, 1794, or early in January, 1795, and has lived upon an occupied it ever since without interruption. This deponent further saith, in the month of February, 1775, Andrew Kinkead lived upon and occupied the land in controversy in this suit which is now occupied by Mrs. Mary Thomas, (who was formerly the widow of Jeremiah Proctor, deceased,) and this deponent was about to purchase the land of Kinkead, who required all the purchase money in hand, and this deponent made a journey to near the Crab Orchard in hopes to borrow the money of an old acquaintance, but did not succeed and the bargains consequently fell through. Kinkead some time after sold the land to Jeremiah Proctor, who took possession of it when Kinkead left it, and afterwards sold it to one Lucas, a saddler, from Washington, who took possession of it and lived upon it awhile, and then either gave up his contract for the purchase or resold it to the said Jeremiah Proctor, who again took possession of and since his death, his wife, the present Mrs. Mary Thomas, and the children of the said Proctor, have remained in the possession of the farm and resided continually upon it. This deponent has resided near the farms occupied by Mrs. Threlkeld and Mrs. Thomas, ever since his first settlement there, and does well know Jeremiah Proctor purchased of Kinkead, Lucas of Proctor, and Proctor again of Lucas, either by giving up his contract for the purchase or making a new one, and that the possession of the land has in every instance followed the sale, and has been as far as this deponent knows uninterrupted, and John Threlkeld got twenty-five acres of his mother, Ann Threlkeld's purchase, and bought of his brother James twenty-five acres more of the said tract of land, which James had also purchased of Lewis Craig, and upon which purchase James Threlkeld settled same time his mother settled, but at what time John Threlkeld settled on his purchase of his mother of his brother James, I do not know, but I do know that the land has been held by Ann Threl-

keld and James Threlkeld, and John Threlkeld ever since the settlement in 1794, and further he saith not."

"WILLIAM J. MOSS."

The deposition of John Hood for the same purpose as the foregoing depositions of Jonathan Rose and William Moss. This deponent, aged about twenty-three years, and first duly sworn deposeth and saith that he came to Kentucky in the spring of 1794, and some time in the ensuing fall or winter he purchased the farm he now lives on in the vicinity of the land in controversy in this suit, and on the 5th or 6th of March, 1795, took possession of his purchase at which time Andrew Kinkead lived upon and occupied the farm now in the possession of Mrs. Mary Thomas, Kinkead afterwards, as I understood, sold the farm to Jeremiah Proctor, who succeeded Kinkead in the possession of it and sold it to one Lucas who occupied it awhile and transferred it to the said Jeremiah Proctor who, and his family, consisting of widow and children, have occupied and resided upon it ever since Lucas quit the possession, and this deponent has never known or heard of any interruption or disturbance of the possession of Kinkead and those claiming under him as above stated, and further this deponent saith not."

"JOHN HOOD."

The foregoing depositions were taken, subscribed, and sworn to before me, a Justice of the Peace for the County of Fleming, this 3d day of June, 1823.

"WILLIAM W. BLAIR."

The deposition of William Moss, taken at the house of Henry Bruce, on the 26th day of August, 1824, to be read as evidence in a suit in Chancery depending in the Fleming Circuit Court, in which Thomas Bodley is Complainant, and Ann Threlkeld, John Threlkeld and Jeremiah Proctor's heirs, &c., are Defendants—This deponent, aged about 57 years and duly sworn, deposeth and saith, that he removed from Loudon County, in Virginia, in the fall of the year 1794, and came to this State in November or early in December of that year, and that he thinks some time in the year following, Daniel Threlkeld purchased of Lewis Craig the tract of land (since purchased *of* by John Threlkeld,) and gave a wagon and two horses for the same, that Daniel Threlkeld married in the winter of 1796, in February, and settled on the land he purchased that same year in March, and that the Defendant John Threlkeld has had uninterrupted possession of the land ever since his purchase from Daniel Threlkeld, so far as he knows or believes, and further deponent saith not.

"WILLIAM MOSS."

"The deposition of Evan Mills, taken for the same purpose as the foregoing deposition of William Moss. This deponent, aged about fifty years, after being duly sworn, deposeth and saith, that

he is well acquainted with the land in controversy in this suit, and that Daniel Threlkeld purchased of Lewis Craig, sen., of Mason County, the land which he sold to his brother John Threlkeld, and he recollects of hearing said Craig some time in the year 1795 say, that he had sold land to Daniel Threlkeld, he further recollects distinctly, that Daniel Threlkeld settled on his purchase with his family in the spring of 1796, and that John Threlkeld has enjoyed uninterrupted possession ever since he purchased the same from Daniel Threlkeld so far as he knows or believes, and further this deponent saith not.

"EVAN MILLS."

The deposition of John Summers, taken for the same purpose as the foregoing deposition of William Moss and Evan Mills. This deponent, aged about 60 years, after being duly sworn, deposeth and saith. That he removed from Montgomery County with his family and settled in this County (then Mason), in the month of April, 1795, and that Daniel Threlkeld married in February, 1796, and settled early in that spring upon the land which he has since sold to his brother, John Threlkeld, he further states, that John Threlkeld has had uninterrupted possession of the land ever since his purchase from his brother Daniel Threlkeld, so far as he knows or believes, and further this deponent saith not.

"JNO. SUMMERS."

The foregoing depositions of William B. Moss, Evan Mills, and John Summers, were taken, subscribed, and sworn to, before me, a Justice of the Peace for the county of Fleming, at the time and place mentioned in the caption. Given under my hand, this 26th day of August, 1824.

WM. W. BLAIR.

The deposition of Henry Bruce as evidence in the suit of Thomas Bodley and Co. against John Threlkeld and others, in the Fleming Circuit Court. This deponent came to this state in December, 1793, and lived some time in the family of Ann Threlkeld, and in the early part of the year 1794, Ann and James Threlkeld purchased of Lewis Craig each 125 acres of land, and commenced improving it, he believes, in the month of March thereafter; and Ann Threlkeld has been in possession of the land ever since, except 25 acres she sold to John Threlkeld, in the latter part of the year 1796, or beginning of 1797; and this deponent knows that John Threlkeld built a cabbin, and removed on the said 25 acres, or else, probably, the cabbin might have stood on the 25 acres — he said John Threlkeld — of his brother James, as the line run very near said cabbin, the above named two tracts of 25 acres each, from the tract of 50 acres, which Lewis Craig deeded to John Threlkeld in the year 1798. John Threlkeld built the house where he now lives, on the 25 acres purchased of his mother Ann, in the year 1798. This deponent also understood that Daniel

Threlkeld purchased of Lewis Craig 72 acres of land in the year 1795, and he knows that said Daniel married in February, 1796, and settled on the said 72 acres in the spring of that year, and remained on the land till the year 1802, and then sold the land to his brother John Threlkeld, who has been in the possession ever since this deponent purchased land, and settled adjoining said tract of 72 acres, and has known the lines since the year 1799, and also adjoining the lands of Ann Threlkeld, and is acquainted with the lines and corners of her land since the year 1798; this deponent has always understood, and believes, that both the land of John and Ann Threlkeld, and also that of the heirs of John Proctor, deceased, is contained in the tract of 166⅔ acres, entered in the name of John Walden. The 25 acres by John of Ann Threlkeld, and the 25 acres purchased by him of James, was conveyed to John by Lewis Craig, and the deed is filed herewith. The bond from Lewis Craig to Daniel Threlkeld, and assigned to John, is also filed herewith, this deponent being a witness to it. And this deponent was with the surveyor Morrison at the time he surveyed it in this suit. This deponent being interrogated, says he has no interest at all in this suit; he married the sister of the defendant, John Threlkeld, and daughter of the defendant, Ann. September 11th, 1824.

HENRY BRUCE.

Fleming Circuit, ss. September Term, 1824.

The foregoing deposition was sworn to in open court.

Att. L. D. STOCKTON, *C. F. C. C.*

The deposition of John Williams of lawful age, taken on the first Monday in November, 1805, at the house of John Fairis, in the County of Fleming, and to be used in evidence in the suit in Chancery depending in the Mason Circuit Court, in which Alexander K. Marshall is complainant, and Thomas Jones is defendant. The deponent being first sworn says, that in 1783 he first travelled the road which — from the Lower Blue Licks by Mayslick, and does not recollect having travelled the road crossing at Lee's creek, all the way from Limestone to the Lower Blue Licks till 1786, in that year he travelled the road from the mouth — Limestone to the Lower Blue Licks, passing the north fork of Licking at the mouth of Lee's creek. The road was then old, and had many marks of tomahawks and painted pictures, which this deponent supposed to have been made by Indians, the said road was called a war-road, but it was sometimes travelled by buffaloe, yet it was not so much trod by buffaloe as the road leading by Mayslick, he says further *says*, that the road crossing the north fork of Licking, at the mouth of Lee's creek had the appearance of those roads which he has since seen on the other side of — and called the war-road; this deponent says further, (being interrogated to that point,) that he was acquainted with the road which crossed the north fork of Licking, at the mouth of Mill creek, about the year 1786, that at early days,

to wit: about that year he has followed that road from the north fork to the forks of Mill creek, where the road forked, the right hand of the fork lead up the right hand fork of Mill creek, and went over to a Lick of Johnson's fork of Licking, thence on to the upper Blue Licks, the left hand fork of the road went over to Fleming waters, to the Spring where Stockton lives, and was lost in the knob, and this deponent does not recollect of any right hand fork of the said road below the forks of the said Mill creek as above described, he says he has travelled from Mayslick to the Upper Blue Licks, and does not remember of having crossed a road of any size. Question by Thomas Young, When were you first at Mayslick? Answer. Think in the Spring of the year 1783. Question. Was there any spring there then? Answer. I do not recollect of any spring but the Lick, I was only travelling, and looked for no spring. Question. Where did you understand May's spring was? Answer. I never heard of May's spring till of late days, I have lately heard Shotwell lives at May's spring, and further this deponent saith not.

Signed, JOHN WILLIAMS.

The above deposition, subscribed and sworn to before me, a justice of Peace for Fleming County. Nov. 4, 1805.

Signed, WM. KENNAN.

A Copy. Att. THO. ARNOLD, *C. B. C. C.*

"The deposition of Louis Marshall, of Woodford County, Kentucky, taken at the office of the Clerk of the Circuit of Fayette County in Lexington, on the 29th day of December, 1824, to be read as evidence in the suit in Chancery, depending in the Fleming Circuit Court, wherein Thomas Bodley, Robert Pogue, &c. are complainants, and Ambrose Walden, John Walden's heirs, Hezekiah Proctor's heirs, &c. are defendants, taken by the complainants. This deponent, being duly sworn, and of lawful age, deposeth and saith, that on the fifteenth day of February, 1799, as well as he can now ascertain, he witnessed a deed from Robert Rutherford, John Peyton, and Charles Magill, to Thomas Bodley, James Hughes, Robert Campbell and Robert Pogue, for 10,000 acres of land in Mason and Fleming Counties, which deed is dated the 15th day of February, 1799, and is now before him, and is also witnessed by James Brown, John Arthur, and McGregor, and he is confident that the names of Robert Rutherford, John Peyton, and Charles Magill, signed to said deed, was wrote by, and is in the hand-writing of Buckner Thruston, then of Lexington, Kentucky, and now a Judge in the District of Columbia, their attorney in fact, who acknowledged the same in the presence of this deponent, to be their act and deed, and this deponent further saith, that he shortly after, say about the 20th February, 1799, took the said deed to Washington, Mason County, Kentucky, proved the execution therof, before the Clerk or Deputy Clerk of the Washington District Court, and left the same with said Clerk for record. He further states, that he is acquainted

with the hand-writing of James Brown, John Arthur, and McGregor, and he verily believes that their names as witnesses to said deed, is in their respective hand-writing, that he has understood and believes that John Arthur and MacGregor have been dead many years, and that James Brown is now without the limits of the United States, as Minister to France. He further states, that the deed was signed and witnessed by the subscribing witnesses, in his presence.

"LEWIS MARSHALL."

Also the deposition — James B. January, taken at the same time and place, to be read in the same suit. This deponent being of lawful age and duly sworn, deposeth and saith, That he is well acquainted with the hand-writing of Buckner Thruston, James Brown, Louis Marshall, and John Arthur, and MacGregor, that he has seen and examined the deed described in the foregoing deposition of Louis Marshall, which is now before him, and he is confident that the signatures of Robert Rutherford, John Peyton and Charles Magill is in the hand-writing of Buckner Thruston their attorney in fact, as stated in said deed, and that the names of the witnesses thereto is in the proper hand-writing of the said witnesses respectively.

"JAMES B. JANUARY."

Fayette County, ss.

The foregoing depositions of Louis Marshall and James B. January, were this day subscribed to before me, a justice of the peace for said County of Fayette, at the time and place stated, and to be read as evidence in the suit mentioned in the caption.

Given under my hand, this 29th day of December, 1824.

WILLIAM WEST, *J. P.*

Upon the back of which depositions is the following, to wit:

These depositions may be used upon the trial of the case to which they relate, without proof of notice of taking them, so far as I am concerned for the defendants."

CHAMBERS,

Attorney for some of the defendants.

STATE OF KENTUCKY, *Fleming County, ss.*

I, Leakin D. Stockton, Clerk of the Court for the Circuit aforesaid, certify that the foregoing pages and the annexed platt and report of survey, contain as full, true and complete transcript of the record and proceedings, had in the suit therein named, as the same remains in my office.

In testimony whereof I hereunto subscribe my [L. S.] name, and affix the seal of my office, at Flemingsburg, the 24th day of October, 1826.

L. D. STOCKTON.

Fleming Circuit, ss.

The fee for this record is $35 00.

Att. L. D. STOCKTON, *C. F. C. C.*

FLEMING CIRCUIT, *ss. Sept. Term*, 1828.

THOMAS BODLEY and ROBERT POGUE, Complainants,
against
AMBROSE WALDEN and others, Defendants. } In Chancery.

At a court continued and held for the Fleming circuit, at the court-house thereof, in the town of Flemingsburg, on Friday the fifth day of September, 1828.

The defendant Ambrose Walden, produced his answer and asked leave of the Court to file the same, which leave is given him upon his giving bond with Robert Wickliffe his security in the penalty of five hundred dollars, conditioned to pay as well the costs that have already accrued in this suit, as also the costs that may hereafter accrue in case said Walden is not successful, which bond was accordingly executed and the answer filed, and it is ordered that this suit be reheard, and the said Walden produced in court his petition to remove the said cause to the United States Circuit Court for the District of Kentucky. And the said Walden proved by William P. Fleming, that the land in controversy was of the value of four thousand dollars, which motion for a removal of the papers is continued until the next term of this court, until which time this cause is continued.

The answer of Ambrose Walden, referred to in the foregoing order, is as follows, to wit:

"The answer of Ambrose Walden of Fauquier county, Virginia, to a bill of complaint, and an amended bill, filed by Thomas Bodley, James Hughes, and Robert Pogue, and an additional bill of Thomas Bodley, all filed in the Circuit Court of Fleming, in Chancery against the defendant and others. This defendant saving and reserving to himself all exceptions and the benefit of every exception to the many errors and uncertainties of the complainant's bills, for answers thereto or unto so much thereof, as it is material for him to answer unto, he answereth and saith, that he can neither admit nor deny that the entry referred to in the bill, and said in it to have been made in the names of Henry Crutcher and John Tebbs, on the 17th day of October, 1783, with the Surveyor of Fayette county, was made as is alleged by the complainants, nor that a survey was legally executed and a patent obtained thereon as set forth by them, nor

that the legal title to the land claimed by the complainants is vested in them. This defendant also cannot admit that the land spoken of has been surveyed conformable to entry, according to law, and possesses all the requisites of a good and valid claim, these matters are subjects upon which it is the peculiar province of the court to decide, and to the court the defendant submits them. This defendant further answering saith, that on the 22d day of May, 1780, he made an entry with the proper surveyor in the words and figures following: "Ambrose Walden enters 1333, &c. as by reference to an attested copy thereto will more fully appear, which he makes a part of this answer, that in the year 1776, a certain Jacob Johnson having made a settlement and raised a crop of corn upon land in the District of Kentucky, entitled himself to the claims bestowed by law in such cases, and having died, Peter Johnson, heir at law of the said Jacob Johnson, on the 7th January, 1780, obtained a certificate, of which an attested copy is annexed, that on the 21st of February, 1780, the said Peter Johnson, heir at law of Jacob Johnson, for the purpose of fully assisting the right acquired by the said Jacob Johnson, and the said certificate made with the proper surveyor, his entry bears date February 21st, 1780, for 400 acres of land, of which entry an attested copy is also annexed and made a part of this answer. This defendant saith, that the settlement and pre-emption of Jacob Johnson mentioned in the entry of this defendant, and the settlement and pre-emption of Peter Johnson, heirs at law of Jacob Johnson are the same, although differently described, that their identity is obvious from the exhibits above referred to, and that they were universally so known and understood. This defendant denies that the entries in the bill referred to are either vague or uncertain, or that they have been illegally and improperly surveyed, he saith that at the period when the entries and surveys were made, the places named therein were well known, and ascertained by the terms employed by the entries and surveys for their description, that there was no Buffaloe road then leading from the Upper Blue Lick to Limestone, that the only Buffaloe road led from the Lower Blue Lick to Limestone, that there were three Buffaloe roads then leading from the Lower Blue Lick in the direction of Lexington, and that the upper road of the three led directly from the Lower Blue Lick to Limestone.

This defendant further answering saith, that he is not one of the heirs of John Walden, deceased, and that he hath no interest in the tract of land of which the entry and survey is said in the bill to have been made by him, and for which a patent was granted to heirs. This defendant saith that a patent, long anterior to that of the complainants, was granted to him for the quantity of land specified in the bill, that the patent was founded upon a survey made conformable to entry, and that the said entry, survey and patent, are not only prior in time to the entry, survey and patent respectively, of the complainants, but that the same are certain and lawful.

This defendant also saith that an injunction is depending in the District Court of the United States, for the District of Kentucky, in

which Thomas Bodley and Robert Pogue the complainants in this cause, and this defendant, are parties to which this defendant refers, and makes his answers in the same a part of this answer, so far as the same and the exhibits set forth by him may be deemed pertinent, of which copies are annexed. This defendant neither admits nor denies the allegations in the bill, to which he has not specifically responded, further he saith not, but prays to be hence dismissed, &c.

his
AMBROSE ⋈ WALDEN.
mark.

FAUQUIER COUNTY, *State of Virginia.*

This 26th February, 1828, Ambrose Walden, above named, appeared before me a Justice of the Peace for the County and State aforesaid, and made oath that the foregoing answer so far as it depends upon his own knowledge is true, and so far as it depends upon the knowledge of others, he believes it to be true."

WM. R. SMITH."

VIRGINIA, *Fauquier County*, to wit:

I, John A. W. Smith, Clerk of the County Court of the said county, do hereby certify, that William R. Smith, before whom the within affidavit appears to have been made, is a Justice of the Peace in and for the county aforesaid, duly commissioned and qualified as such, and that full faith and credit is and ought to be given to all his official acts as such.

[SEAL.] In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court, on the 26th day of February, in the year of our Lord, one thousand eight hundred and twenty-eight, and in the 52d year of the Commonwealth.

JOHN A. W. SMITH.

VIRGINIA, *Fauquier County*, to wit.

I, William Stuart, eldest and presiding magistrate, in and for the county aforesaid, do hereby certify, that John A. W. Smith, is Clerk of County Court of the said county, and that the foregoing certificate and attestation of the said Clerk is in due form of law.

Given under my hand and seal this 27th day of February, 1828.

WM. STUART. [SEAL.]

The exhibits referred to in the foregoing answer were copied in a former part of this record: except those referred to in the latter part of this answer, which were never filed.

The petition of Ambrose Walden referred to in the foregoing order, is as follows, to wit:

The petition of Ambrose Walden to the Hon'bl. the Judges of the Fleming Circuit Court of Kentucky, respectfully sheweth that Thomas Bodley, James Hughes and Robert Pogue, filed their bills and amended bill in the said Circuit Court, and that since the same were filed, an additional bill has been filed by the said Thomas Bodley, in which bills your petitioner and other persons unknown, and said to be heirs of John Walden, Dale Carter, Lieucuss Chaplin, Mrs. Ann Threlkeld, John Threlkeld and Price, John, Thomas, William, Jeremiah, Rachel and Lurinda Proctor, infant heirs and representatives of Jeremiah Proctor, dec'd. are defendants, that in the suit in which the said bills were filed, a decree has been taken as confessed against your petitioner, that the complainants are citizens of the State of Kentucky, that your petitioner is a citizen of the State of Virginia and a defendant in the suit above mentioned, that the other defendants above named are also citizens of the State of Kentucky, that the land sought to be recovered from your petitioner in the suit above referred to, exceeds in value the sum of five hundred dollars, that it is cognizable by the Courts of the United States, he therefore, respectfully petitions that he may be permitted to file his answer in the said suit, and that the same may be removed from the Circuit Court in chancery for the County of Fleming, to the Circuit Court of the District for the United States for the State of Kentucky.

his
AMBROSE ⋈ WALDEN.
mark.

FAUQUIER COUNTY, *State of Virginia.*

This 26th day of February, 1828, Ambrose Walden the petitioner above named, appeared before me, a Justice of the peace for the County aforesaid, and made oath to the facts contained in the petition on the opposite side."

"WM. R. SMITH."

At a court continued and held as aforesaid, on Wednesday the 4th day of March, 1829. Came the parties by their attornies, and on motion of the defendant Ambrose Walden, it is ordered that this suit be removed to the Circuit Court of the United States for the Kentucky District."

STATE OF KENTUCKY, *Fleming Circuit, ss.*

I, Leakin D. Stockton, Clerk of the Court for the Circuit aforesaid, certify that the foregoing six pages contain true and correct copies of the originals as fully as the same remains in my office. Given under my hand this 14th day of May, 1829.

L. D. STOCKTON.

MASON COUNTY, ss.

THOMAS BODLEY and ROBERT POGUE's heirs, &c., Complainants *against* AMBROSE WALDEN, Defendant. } In Chancery.

DUNCAN's Heirs Complainants *against* SAME, Defendant. } In Chancery.

CLARKE's Heirs Complainants *against* SAME, Defendant. } In Chancery.

In obedience and pursuance to an interlocutory decree of the United States Circuit Court, 7th Circuit District of Kentucky, rendered herein, directed to the Surveyor of the County aforesaid, I met the parties above named, agreeably to notice, on the 11th day of December, 1833, upon the land in controversy, and proceeded thence to execute the survey, as directed in said decree; beginning at the nine mile point from the lower Blue Licks, on the upper trace leading to Limestone, shewn by Nathaniel Hixson, and represented on the plat, hereto prefixed, by the letter C., and running thence along said trace, N. 52° 35, E. 253 poles to a stake in said trace at figure 1. Upon this base (being the general course of that part of said trace on which it lies) I have surveyed and laid down Peter Johnson's settlement survey of 400 acres in a square, represented by C. 1, 2, 3.

C. 4, 5, 6. Red dotted lines, Peter Johnson's settlement survey of 400 acres as originally surveyed, shewn by said Hixson.

1, 2, 3, 4. Black lines, Peter Johnson's preemption survey of 1000 acres, laid down adjoining his settlement survey, by lines equidistant therefrom.

1, 2, 5, 6, 11. That part of the same survey as originally surveyed as comes within the controversy.

7, 8, 9, 10. Red lines, the defendants' entry of 1333 acres, laid down in an equilateral square, making the centre of the S. E. line of Johnson's settlement, the centre of said Walden's N. West line.

7, 8, 9, 10. Black lines, said defendants' entry of 1333 acres, as originally surveyed. Shewn on a former occasion by Gen'l. Simon Kenton, and said Hixson.

2, a. b. c. Black dotted lines; said defendants survey of 1333 acres, laid down by order of John Triplett, from a copy of the patent, beginning at the N. E. corner of Johnson's preemption at fig. 2.

12 e. e. e. e. e. e. e. John Triplett's farm.

8. f. g. h. i. 7. The land covered in common by Walden's survey, as originally run out, and as surveyed under the decree aforesaid, containing 1144 acres, 2 roods, and 32 poles, and bounded as fol-

lows, to wit: Beginning at a stake, six feet north of a white oak tree, corner of Walden as last surveyed, represented at 8, and running thence with that line S. 37° 25, E. 297 poles to a stake in a line of Walden's original survey, in Tebb's lane at f., thence with that line S. 20°, W. 288 poles to a stake, in a lane at the intersection of the decreed line 82 poles, N. 20, E. from said Walden's original corner, near Proctor's at g., thence with the decreed line S. 52° 35, W. 95 poles, to a stake in another of said Walden's old lines in cleared land, at h., thence with the old line N. 70, W. 220 poles to a stake at i., in another of the decreed lines; thence with that line N. 37° 25, W. 273 poles, to two buckeyes and a sugar-tree at 7, and thence North 52° 35°, E. 461 poles and 21 links to the beginning.

7. 8. K. 4. That part thereof lying with Johnson's pre-emption, as surveyed under the decree aforesaid, and also within the survey, as originally made, containing 317 acres 1 rood and 38 poles, and bounded as follows, to wit: Beginning at two buckeyes and a sugar-tree, corner of said Walden's decreed survey at 7, and running thence with that line N. 52° 35′ E. 461 poles and 21 links to a stake 6 feet north of a white oak at 8, another of the decreed corners, thence with that line S. 37° 25′ E. 109 poles and 16 links to a stake near a small elm at K. in Johnson's decreed line, thence with that line S. 52° 35′ W. 461 poles and 21 links to a stake near a field at 4., and thence N. 37° 25′ W. 109 poles and 16 links to the beginning.

7. 8. K. *l.* That part thereof within Johnson's pre-emption, as originally surveyed, containing 334 acres, 3 roods, and 8 poles, and bounded as follows, to wit: Beginning at two buckeyes, and a sugar tree, one of Walden's decreed corners at 7, and running thence with a line thereof, N. 52° 35′ E. 461 poles and 21 links, to a stake 6 feet north of a white oak, another of said corners at 8, thence with another of the decreed lines S. 37° 25′ E. 108 poles and 20 links, to a stake in the old line 21 links N. 37° 25′ W. from the small elm tree at K., thence with the old line S. 51° W. 461 poles, to a stake on a ridge, at 1 in Walden's decreed line, thence with that line N. 37° 25′ W. 23 poles to the beginning.

11. 12. 6. That part thereof, lying with the settlement survey, as originally run out, containing 2 acres, 3 roods, and 10 poles, and bounded as follows, to wit: Beginning at a stake near a small branch, where the decreed and original lines of Johnson's settlement intersect, at 11, and running thence with the decreed line S. 52° 35′ W. 228 poles to a stake in Joseph Duncan's line at 12, thence with the old line S. 35¾° E. 4 poles to a stake in said Duncan's pasture, the place at which the old corner stood at 6, and thence N. 51° 15′ E. 228 poles to the beginning.

1. 6. m. n. 4. Represents 7 acres, 2 roods and 25 poles of land, lying within Walden's as originally surveyed, and outside of Johnson's decreed survey (upon pre-emption warrant) and within his claim as first surveyed, and bounded as follows, to wit: Beginning at three white oaks, said Johnson's S. W. corner of his original sur-

vey at 6, and running thence with a line thereof N. 51° E. 13½ poles to a stake in Walden's decreed survey on a ridge at 1, thence with that line N. 37° 25, W. 13 poles to Johnson's decreed line, a stake near a fence at 4, thence with that line S. 52° 35, W. 5½ poles to a stake, said Johnson's decreed corner, thence with another of his lines N. 37° 25, W. 133 poles to a stake in Walden's old line, in Wm. Deye's meadow, at n, thence with Walden's line S. 21¾ W. 9 poles to another stake in said meadow, at m, in Johnson's old line, and thence with that line S. 37° 25, E. 143 poles to the beginning.

3. a. b. 12. Represents 2 acres, 3 roods, and 22 poles of land, lying within Walden's original survey, outside of Johnson's settlement, as laid down under the decree, and within the settlement as originally surveyed, and bounded as follows, to wit: Beginning at a stake in Duncan's pasture, at 3, corner of said settlement, (as decreed) and running thence by a line thereof, N. 37° 25, W. 85 poles to a stake in Walden's first survey, at a, thence with said line S. 21¾ W. 4½ poles to a stake in said Johnson's settlement line as first run out, at b, thence with that line S. 36° E. 84 poles to a stake in the decreed line of the pre-emption at 12, and thence with that line N. 52° 35 E. 6 poles to the beginning.

2. d. c. 5. Represents 21 acres, 2 roods, and 36 poles within Walden as aforesaid, outside of Johnson's settlement survey, as laid down under the Decree and within his settlement as originally surveyed, and bounded as follows, to wit: Beginning at a stake standing S. 53° E. 1 pole and a half from a large sugar tree, marked cornerwise at 2, corner to the settlement under the Decree, and running thence with a line thereof N. 37° 25 W. 219 poles to a stake in Nathaniel Hixson's field, in Walden's original line at d, thence with his line, S. 86° E. 31 poles to a stake in said Johnson's original line, at C., thence with that line S. 39¼ E. 191 poles to a willow-oak tree standing and marked, and a fallen honey-locust and a hackberry stump, said Johnson's original corner at 5, and thence S. 40½ E. 18 poles to the beginning.

3. 5. e. o. Represents 15 acres within Walden as at first surveyed, outside of Johnson's pre-emption as laid down under the Decree and within his pre-emption as originally surveyed, and bounded as follows, to wit: Beginning at an ironwood and white oak, corner to the pre-emption as decreed, at 3, thence with the original line, N. 51, E. 22 poles crossing a branch to a white, Johnson's old corner, at 5, thence by a line of the original survey N. 37° 25 W. 102½ poles to Walden's line at e, a white oak and hickory, Jno. Triplett's corner, thence with Walden's line N. 86 W. 39 poles to a stake in said Johnson's decreed line at o, and thence with that line S. 37° 25, E. 136 poles to the beginning.

The heirs of Robert Pogue produced no title papers on the occasion of this survey, neither did the heirs of Thomas Bodley, nor Joseph Duncan, nor any of the parties Complainants, except John Triplett, who produced Deeds and other title papers, for the land in controversy, claimed by him.

ATHELSTAN OWENS,
Surveyor of Mason County.

NOTES OF REFERENCE.

A, B, C, D, E, F, in drawn lines, Bodley's 16,000 acres.
A, G, H, in ditto, 10,000 acres.
F, G, K, I, Bodley and Huge's 3,000 acres.
Figure 1, 2, 3, 4, represents Jacob *Jacob* Johnson's settlement and preemption, as surveyed.
5, 8, 13, 14, in dotted lines, Jacob Johnson's settlement and pre-emption, as first surveyed.
5, 6, 7, 8, Ambrose Walden's 1333 acres.
9, 10, 11, 12, 8, 7, John Walden's 1666 acres.
All the above surveys laid down from a platt made out in the suit of Bodley and Co. against John Taylor.
15, represents nine miles by the meanders of the Buffaloe road from the Upper Blue Lick past A. and D.; and at the request of the complainants, I laid down 15, 16, 17, 18, four hundred acres, that the complainants contend would answer Jacob Johnson's settlement of 400 acres, and 19, 20, 21, 22, would represent said Johnson's pre-emption of 1000 acres around his settlement, and 21, 22, 23, 24, would represent Ambrose Walden's 1333 acres, joining Johnson on the east.
22, 23, 24, 25, 26, would represent John Walden's 1666 acres, joining Ambrose Walden on the south-east, and running east and south-east for quantity.
D, The Mud Lick, on the Mud Lick branch of Johnson's Creek.
R, represents Mayslick. B, Stockton's Spring. A, the forks of Wilson's Run, and Boon's and McIntire's Camp.

JOSEPH MORRISON, S. F. C.

5th September, 1823, by the consent of the parties I amended the foregoing survey by laying down the Commissioner's, (David Morris and D. V. Payne's,) *and* to Lewis Craig of the one-third of John Walden's 1666⅔ acres, being in two tracts; one tract containing one hundred eighty-five acres, and represented on the platt by the figures 7. 923, and black dotted line to 28. 9, and to the beginning. The other tract, containing three hundred and seventy acres, and represented by the figures 29, 30, 31, 32, 33, 34, and to the beginning.

JOSEPH MORRISON, Sur. F. C.

At the request of the defendants I proceeded, on the 11th and 12th of August, 1823, to amend the foregoing survey, and by the direction of the defendants' counsel, I laid down John Threlkeld's bond, being the 72 acres formerly owned by Daniel Threlkeld, the boundaries of which was shown to me by Henry Bruce and Rolly S. Porter, and is represented on the platt by the red figures 1, 2, 3, 4, and bounded as follows, beginning at figure 4, a fallen walnut; thence S. 2° E. 94 3½ poles, passing by an ancient marked line tree to 3, a white oak and hickory, the hickory anciently marked as a corner, to suit said 72 acres, and the white oak anciently blazed to suit the same, thence east, passing near an ancient marked line 89

poles, and fell 2½ poles to the right of 2, a honey-locust, in Bruce's field, near which stands an elm, thence N. 2, W., passing near an old marked line 101 poles, and fell 5 poles to the left of 1, a hickory stump shewn by Rolly S. Porter for a corner of said 72 acres, thence N. 68, W. 105 poles, to the beginning.

1. 4. 5. And red dotted line to figure 1 represents the improvements on said 72 acres.

(2) 2. 3. 6. 7. 8. 9. Represents Ann Threlkeld's Deed from Lewis Craig for 100 acres, and bounded as follows: Beginning at figure 2, a honey-locust and elm, shewn by Henry Bruce for Ann Threlkeld's corner, thence S. 20¾ W. 44$\frac{4}{10}$ poles to 9 (a large white oak and an ash, anciently marked), as a corner to suit Ann Threlkeld's said Deed, and shewn by Henry Bruce for her corner. Thence N. 76 W. 219½ poles to 8 a blue ash and buckeye, anciently marked as a corner, pointing to the lines of Ann Threlkeld's said Deed, and shewn by Henry Bruce for her corner, thence N. 20½ E. passing with an anciently marked line where the land was not cleared 130 poles to 7 a stake in cleared land, thence by protraction S. 68 E. 97 poles to 6 a stake in the Blue road, thence S. 2. E. 99½ poles to 3 a hickory and white oak, anciently marked as a corner, the hickory marked and the white oak blazed, pointing to the lines of Deed, thence N. 88½ E. 98 poles to the beginning.

(2) 3. 6. 7. 10. 11. 12. Represents Ann Threlkeld's improvement and her dwelling house near 13.

(3) 4. 6. 7. 13. 14. 15. John Threlkeld's 50 acres from Lewis Craig, laid down from survey, as follows: Beginning at 7 a stake, Ann Threlkeld's corner. Thence S. 20½ W. 24 poles to 13 a stake, thence N. 71¼ W. with an ancient marked line 65 poles to 14, two sugar-trees. Thence N. 20 E. with an old marked line 68 poles, to 15, a dogwood and hickory, marked as a corner, pointing to the lines of said 50 acres, thence S. 68 E. 145 poles, with an ancient marked line to 4, a fallen walnut, thence S. 2º E. 44 poles to 6, a stake near a small drain, thence N. 68, W. 97 poles to the beginning, the boundaries all around was shewn to me by Henry Bruce for the boundaries of John Threlkeld's said fifty acres from Lewis Craig.

(3) 4. 6. 7. 13. 17. 16. Represents John Threlkeld's improved or cleared land on said 50 acres and his dwelling house at ⌂ —4. 6. 7. 23. that part of John Threlkeld's aforesaid 50 acres, that he got of Ann Threlkeld. 13. 14. 15. 23. that part of John Threlkeld's aforesaid 50 acres that he got of James Threlkeld.

(4) 19. 18. 19. 20. represents Mary Thomas and the heirs of Jeremiah Proctor's 150 acres from Survey, as follows. Beginning at 9, a large white oak and ash, anciently marked as a corner pointing to the lines of the said 150 acres. Thence N. 76, W. 205½ poles to 18, a sugar-tree and a large red or black oak, anciently marked as a corner pointing to the lines of said 150 acres, thence S. 19° W. 122 poles with an old marked line to 19, a box-elder marked as a corner to suit said 150 acres. Thence S. 70½, E. with an old marked line where the land is not cleared, 202 poles to 20, a pea-locust

and white oak marked as a corner. Thence N. 20, E. with an ancient marked line 143 poles to the beginning, which includes 7 or 8 acres of Lucius Chapline's land, 21, 18, 19, 22, and red dotted line to 21 represents the improvement on said 150 acres.

▭ ▯ Represents Lucius Chaplin's two lots of ground.

JOSEPH MORRISON, *Sur. F. C.*

B. L. represents The Lower Blue Lick.

O. the mouth of Limestone Creek at Maysville.

B. L. and dotted line past M. N. and to O. the middle Buffaloe road from the Lower Blue Lick to the mouth of Limestone.

B. L. and dotted line past P. & R. Mayslick, and to O. represents the upper Buffaloe road, from the lower Blue Lick to the mouth of Limestone. Both of said Buffaloe roads laid down from a survey I took of them in the suit of A. K. Marshall against Parker et al.

B. L. and dotted lines past W. to X. a Buffaloe road laid down from a platt in the suit of Bodley & Co. against Jno. Taylor.

U. B. L. the Upper Blue Licks.

T. the mouth of Cabin Creek.

U. B. L. and dotted line past A. B. C. and to T. a Buffaloe road from the Upper Blue Lick to the mouth of Cabin Creek, by the way of Stockton's Spring and the mouth of Indian Creek, and laid down from notes taken of said road by Elias Hord.

U. B. L. and dotted line past A. & D. the Mud Lick.

E. & F. the mouth of Mill Creek, and to G. a Buffaloe road from the upper Blue Lick, and laid down from a survey I took of it at the request of the complainant Bodley, the road shown to me by Majr. John McIntire, I took a survey of it from A. to G.

JOSEPH MORRISON, *S. F. C.*

UNITED STATES OF AMERICA, 8th *Circuit Kentucky District*, ss.

J. John H. Hanna, Clerk of the 8th Circuit Court of the United States of America, in and for the Kentucky District, do hereby certify that the foregoing pages contain a full, true and complete transcript of the record, and proceedings had, in the case therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, this 24th day of May, A. D. 1838, and in the 62d year of our Independence.

JNO. H. HANNA.

To Harry J. Bodley, William S. Bodley, William H. Hurst and Ann J. his wife, Edmund B. Church and Maria his wife, John F. Bodley, Catherine E. Bodley, Thomas Bodley, Ellen P. Bodley, George W. J. Bodley, Catharine H. Bodley, James Pogue, John Pogue, Lindsay Pogue, Edwin Pogue, Robert Pogue, Samuel Gar-

rison, William Andrew Mackey, John Patton, Nancy Patton, Thomas Patton, Amanda Patton, James Campbell, Mary Campbell, James Lindsey, Nancy Lindsey, Henderson Duncan, Alfred Duncan, Mitchell Duncan, William Duncan, Jane Duncan, Martha Duncan, Benjamin Duncan, Joseph Duncan, Jane Duncan, Elizabeth Duncan, Judith Lacey, Susan Lacey, Thomas Lacey, Charles Lacey, Walter Lacey, Daniel Lacey, Daniel Clark, Susan Sumrall, Daniel Clark, Mary H. M'Millan, Jonathan Rose, Benjamin Umstead, Robert Taylor, Robert Taylor, jr. John D. Taylor, Eliza Sandridge, and William Drake.

Whereas an appeal has been prayed by Ambrose Walden and is hereby granted to the Supreme Court of the United States of America, from a decree of the Seventh Circuit Court of the United States of America, in and for the Kentucky District, at the November Term, 1834, in a suit in Chancery, wherein the said Harry J. Bodley, William S. Bodley and others were Complainants, and said Ambrose Walden was Defendant.

These, therefore, are to cite and command you to be and appear in the said Supreme Court of the United States, at the City of Washington, on the second Monday in January next, then and there to be heard, if any thing you have to say upon the said Appeal.

Witness my hand as Judge of the District of Kentucky, this 14th day of July, 1838.

THOS. B. MONROE, J. U. S. Dis. Ky.

Executed on all the following defendants, between the 17th August and the 27th day of October, viz. H. J. Bodley, W. S. Bodley, W. H. Hurst, and Ann his wife, John F. Bodley, Catherine E. Bodley, Thos. Bodley, Ellen P. Bodley, Geo. W. J. Bodley, Cath. H. Bodley, Lindsay Pogue, Sam. Garrison, W. A. Mackey, Joseph Duncan, Susan Boyd—late Lacey, Thomas Lacey, Walter Lacey, Daniel Lacey, Susan Simrall, Danl. Clark, Jr. Mary H. McMillan, Ben. Umstead, Robert Taylor, Senr. Robert Taylor, Jr. Jno. D. Taylor, Eliza Sandridge and Edwin Pogue, and on Mrs. Judith Whitaker, late Lacey.

The following defendants are not found, no inhabitants of this district, viz. E. B. Church and Maria his wife, James Pogue, Jno. Patton, Nancy Patton, Thomas Patton, Amanda Patton, James Campbell, Mary Campbell, Henderson Duncan, Jane Duncan, 1st. Mitchell Duncan, Willm. Duncan, Ben. Duncan, Elizabeth Duncan, Charles Lacey, and Jonathan Rose. The following defendants are not found, having departed this life; viz. John Pogue, Robert Pogue, James Lindsay, Nancy Lindsay, Alfred Duncan, and Willm. Drake. The following are not found, there being no such persons that I can find, or hear of, viz. Daniel Clark, Martha Duncan and Jane Duncan, 2d.

JOHN M. McCALLA, *M. K. D.*

28 Defendants, . . .	$ 56 00
323 Miles travel, . .	16 15
	$72 15.

246.

SUPREME COURT OF THE UNITED STATES.

No.

BANK OF THE METROPOLIS, *Plaintiff in Error*,

vs.

ERNESTUS GUTTSCHLICK.

ERROR TO THE CIRCUIT COURT U. S. FOR WASHINGTON, D. C.

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UNITED STATES OF AMERICA.

The President of the United States,

To the Judges of the Curcuit Court of the United States for the District of Columbia, sitting for the County of Washington—Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said Circuit Court before you or some of you between Ernestus Guttschlick plaintiff, and the President and Directors of the Bank of the Metropolis, defendants, a manifest error hath happened to the great damage of the said President and Directors of the Bank of the Metropolis, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that under your hand distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this writ, so that you have the same at Washington on the first Monday of August next, in the said Supreme Court to be then and there held, and that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error which of right and according to the laws and custom of the United States should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the said Supreme Court.

Issued this 14th day of May, 1838.

W. BRENT, *Clerk*,
Circuit Court, District of Columbia,
for Washington County.

DISTRICT OF COLUMBIA, to wit:

The United States of America to Ernestus Guttschlick, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United [States] on the first Monday of August next, pursuant to a writ of error filed in the Clerk's Office of the Circuit Court of the United States for the District of Columbia, in the county of Washington, wherein the President and Directors of the Bank of the Metropolis are plaintiff in error, and you are defendant in error, to shew cause, if any there be, why judgment rendered against the said President and Directors of the Bank of the Metropolis in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. William Cranch, Chief Judge of the Cir-

cuit Court of the District of Columbia, this 14th day of May 1838.

W. CRANCH.

Service 2d *July*, 1838.

JOSEPH H. BRADLEY, *Attorney.*

Know all men by these presents, that we, John P. Van Ness and George Thomas of Washington, are held and firmly bound unto Ernestus Guttschlick in the full and just sum of three thousand dollars, current money, to be paid to the Ernestus Guttschlick his certain attorney, executors, administrators or assigns, to which payment well and truly to be made and done, we bind ourselves and each of us our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this 14th day of May, in the year of our Lord one thousand eight hundred and thirty-eight.

Whereas lately at a Circuit Court of the United States for the District of Columbia, sitting for [the] county of Washington, in a suit pending in the said Circuit Court, wherein the said Ernestus Guttschlick was plaintiff, and the President and Directors of the Bank of the Metropolis were defendants, judgment was rendered against the said President and Directors of the Bank of the Metropolis, and they having obtained a writ of error, and filed a copy thereof in the clerk's office of the said Circuit Court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Ernestus Guttschlick, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the Monday of next.

Now the condition of the above obligation is such, that if the said President and Directors of the Bank of the Metropolis shall prosecute their writ to effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue in law.

Signed, sealed, and delivered
in the presence of

JOHN P. VAN NESS, [SEAL.]
GEORGE THOMAS, [SEAL.]

Approved, W. CRANCH.

Style of Court.

DISTRICT OF COLUMBIA: ss.

At a Circuit Court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of March, being the twenty-sixth day of the same month, in the year of our Lord one

thousand eight hundred and thirty-eight, and of the Independence of the United States the sixty-second,

PRESENT

The Hon. WILLIAM CRANCH, *Chief Judge.*
BUCKNER THRUSTON, } *Assistant Judges.*
JAMES S. MORSELL, }

ALEXANDER HUNTER, Esquire, *Marshal.*

WILLIAM BRENT, *Clerk.*

In the record of proceedings of said court, among others are the following, to wit:

ERNESTUS GUTTSCHLICK
vs.
THE PRESIDENT AND DIRECTORS OF THE BANK OF THE METROPOLIS. } *March Term*, 1838. Parties

Be it remembered, that heretofore, to wit, on the twenty-first day of March, in the year of our Lord one thousand eight hundred and thirty-six, the said Ernestus Guttschlick, by Joseph H. Bradley, Esquire, his attorney, prosecuted and sued forth out of the Circuit Court here, the United States writ of subpœna, directed to the Marshal of the District of Columbia, in the words, and of the tenor following, to wit:

DISTRICT OF COLUMBIA, to wit:

THE UNITED STATES OF AMERICA, Writ of Cap ad resp.

To the Marshal of the District of Columbia, Greeting:

You are hereby commanded to summon the President and Directors of the Bank of the Metropolis, if they shall be found within the county of Washington, that all excuses set aside, they be and appear before the Circuit Court of the District of Columbia, to be held for the county of Washington, in the city of Washington, on the fourth Monday of March instant, to answer unto Ernestus Guttschlick in a plea wherefore they broke the covenant which they ought to have kept, and so forth.

Hereof fail not, at your peril, and have you then and there this precept.

Witness W. CRANCH, Esquire, *Chief Judge of the said court.*

Issued the 21st day of March, 1836.

[Bradley] W. BRENT, *Clerk.*

And the aforesaid plaintiff on the day of prosecuting and suing forth of the aforesaid writ, declared against the said defendants in the plea aforesaid, in form following, to wit:

nar. ERNESTUS GUTTSCHLICK
vs.
THE PRESIDENT AND DIRECTORS OF
THE BANK OF THE METROPOLIS.

Whereupon the said plaintiff by Jos. H. Bradley, his attorney, complains for that, whereas, heretofore, to wit: on the 9th day of November, 1827, at the county aforesaid, the said plaintiff bought of the said defendant a certain lot of ground, in the city of Washington and District of Columbia, being lot No. 5, in square No. 489, as laid down on the plat of the said city, for the sum of $1191 25, and then and there paid to the said defendants on account of the said purchase money, the sum of $591 25, leaving due the sum of $600, for which he gave to the said defendants his promissory note payable six months after the date thereof, with interest from date, which sum of $600, when paid the said defendants did then and there agree should be in full for the purchase money of said lot: and the said defendants, in consideration thereof, did then and there agree to and with the said plaintiff, in manner following, that the said defendants, (by the name of the Bank of the Metropolis) through the president and cashier, was thereby pledged, when the above sum should be paid, to convey the said lot, viz. lot 5 in square 489, in fee simple, to the said plaintiff, by the name of Ernestus Guttschlick, his heirs or assigns for ever. And the said plaintiff, in fact, saith that at the expiration of six months from the making of the said agreement, to wit, on the 12th day of May, 1828, he did pay to the said defendants the said sum of $600, and the interest thereon, according to the true intent and meaning, tenor and effect, of the said agreement: yet the said defendants, not regarding their said agreement, nor the promise and undertaking so by them made, in manner and form as aforesaid, have not conveyed the said lot No 5, in square No 489, in the city of Washington, to the said plaintiff, his heirs and assigns, in fee simple for ever, but to do so have hitherto wholly neglected and refused, whereby, &c.

2d. Court. And whereas the said defendants, by John P. VanNess, the president of the said bank, and Alexander Kerr, the cashier thereof, agents for that purpose, duly authorized by, and acting on the behalf of the said defendants, did on the 9th day of November, 1827, at the county aforesaid, bargain and sell to the said plaintiff, a certain other lot of land situate in the city of Washington and District of Columbia, and known and distinguished on the plat of said city, as lot No. 5, in square No. 489, and did on the day and year aforesaid, receive from the said plaintiff the sum of $591 25, as part payment of the said purchase money of the said lot, and also the promissory note of the said plaintiffs, bearing date the day and year aforesaid, payable six months after the date thereof, for the sum of $600, with interest from date, which when paid was to be in

full of the purchase money of the said lot, and did thereupon, in consideration thereof, put the said plaintiff in possession of the said lot, and did then and there further agree, by the said John P. Van Ness, the president of the said bank, and Alexander Kerr, the cashier thereof, agents for that purpose, duly authorized by the said bank, that upon the payment of the said sum, the said bank would convey the said lot No. 5, in square No. 489, in fee simple, to the said plaintiff by the name of Ernest Guttschlick, his heirs and assigns for ever; and the said plaintiff, in fact, saith that the said John P. Van Ness and Alexander Kerr, were, by the said defendants, duly authorized to make the said agreement; and that the said plaintiff in fact paid the said sum of $600, wit h the interest thereon, according to the true intent and meaning, tenor and effect of his said agreement, to wit, on the 12th day of May, 1828, and received and continued in possession of the said lot, and was obliged to pay, and did pay the taxes and other public dues thereon, amounting to a large sum of money, to wit, the sum of $300, from the 9th day of November, 1827, until the 30th day of December,.1835, when he was turned out of his possession of the said lot by the Patriotic Bank of Washington, yet the defendants have not although often thereto requested by the said plaintiff, conveyed the said lot in fee simple to the said plaintiff by the name of Ernest Guttschlick, his heirs and assigns for ever, but the same to do hath hitherto wholly neglected and refused, whereby, &c.

And whereas the said defendants, on the 9th day of November, 1827, to wit: at the county aforesaid, by their certain agreement of that date, acknowledged to have received from the said plaintiff the sum of $591 25, lawful money, and the promissory note of the said plaintiff, dated the 9th day of November, 1827, payable six months after the date thereof, with interest from date, and in consideration thereof, put the said plaintiff in possession of lot No. 5, in square No. 489, in the city of Washington, as the said lot and square are numbered and laid down on the plat of said city, and undertook and faithfully promised the said plaintiff, upon the payment of the said promissory note and interest, to convey to said plaintiff the said lot in fee simple: and the said plaintiff in fact saith, that on the 12th day of May, 1828, he did pay to said defendants the said sum of money and interest, whereby the said defendants became, and were liable and bound to convey the said lot to the said plaintiff, in fee simple absolute, by a good and indefeasible title free from encumbrances, being according to the tenor and effect. true intent and meaning of their said agreement, and being so liable, undertook and promised the said plaintiff so to convey the said lot free from encumbrance, in fee simple, to him, by the name of Ernest Guttschlick, his heirs and assigns for ever: Yet the said plaintiff says that the said defendants were not

3d Count.

at the time when, &c., at &c., or at any time after, seized or possessed of the said lot in fee simple, nor did they, nor would at the said time, or at any time afterwards, as aforesaid, although then and there so requested by said plaintiff, to convey the said lot to the said plaintiff, as by their said agreement and undertaking they had so as aforesaid undertaken, promised and agreed; and the said plaintiff further in fact saith, that being in possession of the said lot as aforesaid, he was compelled and obliged to pay, and did in fact pay the taxes and public dues thereon, amounting in the whole to the sum of three hundred dollars, whereby, &c.

And whereas the said defendants were on the day and year aforesaid, to wit: on the day of December, 1835, indebted to the said plaintiff in the sum of two thousand dollars for so much money before that time by the said defendants before that time had and received to the use of the said plaintiff, and being so indebted, the said defendants then and there undertook, and faithfully promised the said plaintiff to pay him the said sum of money, when they should be thereto afterwards requested, yet the said defendants the said several sums have not paid to the said plaintiff, nor have they paid any part thereof, but the same, or any part thereof, to pay to the said plaintiff have hitherto wholly neglected and refused, to the damage of the said plaintiff three thousand dollars—and therefore he brings suit.

JOS. H. BRADLEY, *for Plaintiff.*

March 1836 At which mentioned fourth Monday of March, in the year of our Lord one thousand eight hundred and thirty-six, and the day of the return of the aforegoing writ, comes into the Circuit Court here the said plaintiff, by his attorney aforesaid, and the Marshal of the District of Columbia, to whom the said aforegoing writ was in form aforesaid directed,

Marshal's Return. makes return thereof to the court here, thus endorsed, to wit:

"Summoned JOHN P. VAN NESS, *President of the*
"*Bank of the Metropolis.*
"A. HUNTER, *Marshal.*"

D fend'nts' appearance And the said defendants being called, appear in court here by Richard S. Coxe, Esquire, their attorney: and thereupon on motion of the said plaintiff, by his attorney aforesaid, it is ruled by the court here, that the said defendants answer to

Rule plea and imparlance. the declaration aforesaid of the said plaintiff, or judgment by the court here will be entered against them in default thereof: and the said defendants, by their attorney aforesaid, defends the force and injury, when, and so forth, and prays leave of the court here to imparle until the fourth Monday of November next, and then to answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, and to

them it is granted, and the same day is given to the said plaintiff also.

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-six, to which said day the said defendants had leave to imparle, and then to answer to the declaration aforesaid of the said plaintiff, in the plea aforesaid, comes again into the Circuit Court here, as well the said plaintiff by his attorney aforesaid, as the said defendants by their attorney aforesaid; and the said defendants by their attorney aforesaid, as before defend the force and injury, when, and so forth, and say that they did not assume upon themselves, in manner and form as the aforesaid plaintiff above against them hath complained, and of this they put themselves upon the country; and the said plaintiff in like manner, and so forth, therefore let a jury thereon appear before the court here, on the fourth Monday of March next, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c.; and the same day is given to the said parties then and there, and so forth. March term 1836. Venire facias to

At which mentioned fourth Monday of March, in the year of our Lord one thousand eight hundred and thirty-seven, comes again into the Circuit Court here, as well the said plaintiff by his attorney aforesaid, as the said defendants by their attorney aforesaid; thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties by their attorneys aforesaid, and by order of the court here thereon, is continued until the fourth Monday of November next. March term 1837. Appear'nce and contin'ance to

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-seven, to which said day the said cause was continued, comes again into the Circuit Court here, as well the said plaintiff by his attorney aforesaid, as the said defendants by their attorney as aforesaid; thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties, by their attorneys aforesaid, and by order of the court here thereon, is further continued until the fourth Monday of March next. Nov. term 1837. Appear'nce and contin'ance to

And now at this day, to wit, the said fourth Monday of March, in the year of our Lord one thousand eight hundred and thirty-eight, comes again into the Circuit Court here, as well the said plaintiff by his attorney aforesaid, as the said defendants by their attorney aforesaid; whereupon for trying the issue aforesaid, it is ordered by the court here, that twenty persons be drawn, by ballot, from the panel of petit jurors returned by the marshal to the court here; and twenty persons being so drawn, and a list of their names being furnished each of the parties, and the counsel of the parties having each stricken out four persons from the lists, there- March term 1838.

upon the remaining twelve persons being called, come, to wit:

Jury.

1. David A. Gardiner,
2. Walter Clarke,
3. William Waters,
4. John Hopkins,
5. John Mount,
6. Joseph Brooks,
7. Clement Woodward,
8. William N. Waters,
9. John B. Ferguson,
10. Richard Brooks,
11. Thomas Jackson,
12. Benjamin Burnes.

Verdict. Who, being empannelled and sworn to say the truth in the premises, upon their oath do say, that the said defendants did assume upon themselves in manner and form, as the aforesaid plaintiff above against them have complained, and they assess the damages of the said plaintiff, sustained by reason of the non-performance of the promise and assumption aforesaid, to the sum of eleven hundred and ninety-one dollars and twenty-five cents, ($1191 25,) with interest from the ninth day of November, in the year of our Lord one thousand eight hundred and twenty-seven.

Damages.

Judgment. Therefore it is considered by the court here, that the said plaintiff recovers against the said defendants, as well the sum of eleven hundred and ninety-one dollars and twenty-five cents, with interest from the ninth day of April, one thousand eight hundred and twenty-seven, the damages aforesaid, by the jurors aforesaid, in form aforesaid, assessed to be sustained by occasion of the non-performance of the promise and assumption aforesaid, as the sum of thirty dollars and sixty-five cents, by the court here unto him the said plaintiff, on his assent, adjudged for his costs and charges, by him about his suit in this behalf laid out and expended. And the said defendants in mercy, &c.

(Test.) W. BRENT, *Clerk*.

Memorandum. MEMORANDUM.—Before the jurors aforesaid withdrew from the bar of the court here, the said defendants, by their attorney aforesaid, filed in court here the following bills of exceptions, to wit:

Defts' first bill of exceptions. Defendants' first exception.

ERNEST GUTTSCHLICK

vs.

THE BANK OF THE METROPOLIS.

On the trial of this cause the plaintiff, to sustain the issue on his part, offered in evidence to the jury the paper (copied in page ,) the execution of which was duly proved, accompanied by evidence that the plaintiff had paid to the defendants, and that they received the money therein mentioned, and gave the note therein mentioned, which at maturity was also paid, to the defendants for the purchase money of the land also therein mentioned; to the admissibility and

competency of the same the defendant, by its counsel, objected, until some evidence should be given showing the authority of the parties who executed the same to sign said paper, but the court overruled the objection and suffered the said paper to be read to the jury, to which ruling of the court the defendant excepted, and prayed the court to sign this bill of exceptions, which is accordingly done, this first day of May, eighteen hundred and thirty-eight.

B. THRUSTON, (SEAL.)
JAMES S. MORSELL. (SEAL.)

Defendants' second bill of exceptions.

Defts' 2nd bill of exceptions.

ERNEST GUTTSCHLICK
vs.
THE BANK OF THE METROPOLIS.

In the further progress of this trial, and after the evidence stated in the foregoing bill of exceptions had been given, the plaintiff, further to maintain the issue on his part joined, offered to prove by a competent witness, that he, in December, 1835, at the instance of plaintiff, examined the records of deeds in the clerk's office for the county of Washington, for the purpose of tracing the title of said plaintiff to said lot mentioned in the aforegoing bill, and after such examination wrote for said plaintiff his letter to said bank, dated 17th December, 1835, set forth in a former bill of exceptions—that when he wrote that letter, a deed purporting to be executed by John P. Van Ness, President of the Bank of Metropolis, to plaintiff, was before him, and is the deed referred to in said letter, having been handed to him by plaintiff. That said deed was duly recorded on the 13th day of May, in the year 1828, and by a memorandum in the record book in the handwriting of witness, appears to have been delivered on the day of August, 1828—that deeds, after being recorded, are delivered only to the grantee, or upon his order. Mr. Bradley states, that before this suit was brought, and after he was employed by plaintiff as counsel in the cause, he'd had an interview with Mr. Coxe as counsel of the defendants, in the hope of compromising the difference between the plaintiff and the defendants; that in that interview he stated the grounds of the plaintiff's demand, and requested Mr. Coxe to see the defendants on the subject; that Mr. Coxe then urged that as the plaintiff had received a deed from the defendants, he could not go behind the deed to the original contract between the parties; that witness then told him that the deed had never been executed by defendants, and was void from the alterations on the face of it, and proposed to bring and exhibit it to him, when they should have a subsequent interview—that they did have a subsequent interview, and witness produced and exhibited for the inspec-

tion of Mr. Coxe the said deed; that in that interview he distinctly understood that Mr. Coxe had had an interview with the president of the bank of the Metropolis on the subject of this demand, and as witness inferred from what passed, was acting under the authority, and as counsel of defendants, that he so considered him as acting; that either at that interview or a subsequent, witness understood from Mr. Coxe that the defendants intended to resist the demand of plaintiff, and that witness afterwards instituted this action; that to the best of the recollection of witness, he had, previous to either of these interviews, written to defendants, setting out the plaintiff's claim. Witness further stated, that after the jury were sworn in this cause, Mr. Coxe, counsel for defendants, asked witness to let him see the deed, which witness understood to be the deed which he had, as before stated, shewn to Mr. Coxe, and which was referred to in the letter of plaintiff to defendants, dated 17th November, 1835; that witness said, "Certainly, I have shewn it to you before, and will have to offer it in evidence, and can have no objections to your seeing it." That Mr. Coxe then took the deed and examined it, and witness saw it in the hands of General Van Ness, the president of the said Bank of Metropolis; that no objection was made by Mr. Coxe or General Van Ness, and witness supposed the deed to be in evidence; that when the counsel for defendants first insisted to the court that the Bank of the Metropolis had given a deed to plaintiff according to their said agreement of 9th November, 1827, witness immediately interrupted him, and expressed his surprise to the court, and stated that the expression used by plaintiff in his said letter was an error, and that the deed referred to had been exhibited to defendants' counsel and president, in court, and was in evidence: the plaintiff then further proved by Henry Naylor, that he was employed by plaintiff to make the abstract of the title accompanying the said letter of plaintiff of 17th November, 1835, and prepared the original draft of said letter, and that the deed therein referred to, was the deed now offered in evidence, and that the letter which was sent to the said defendants was substantially a copy of the said original draft. The court thereupon permitted the said deed to be read in evidence, and it was accordingly so read.

Mr. Coxe states, that some time since, probably before the institution of the suit, Mr. Bradley spoke to him on the subject of Guttschlick's claim upon the Bank of the Metropolis, that it was the first intimation he had of the case; that he was the general counsel of said Bank, but had received no instructions or authority from it on this subject, subsequently he had another interview or perhaps two, with Mr. B. on the subject, and examined the deed submitted to him by Mr. B. Having received no other directions or authority from the Bank than merely to contest the claim, and which he com-

municated to Mr. Bradley, he considered all the conversations between them as entirely private and as wholly inoperative upon the bank, and therefore did not impress what passed particularly on his memory. He never was authorized by the bank to arrange or compromise the matter, and never professed to have any such authority.

On the trial of the cause, having perceived by plaintiff's letter to the defendant that a reference was made to a deed from the Bank of Metropolis to plaintiff, he sent to the record room for the book of records that he might see it. Some difficulty occurred in finding it, and he asked Mr. Bradley if he had the original, and would let me see it. Mr. B. said certainly, he had let me see it before, and had no objection. I took the deed, looked over it and returned it to Mr. Bradley. There was no remarks made on the subject by either that I recollect, no suggestion that it was designed to offer it in evidence; all that passed was supposed by me to be entirely private and friendly, and in no respect professional; subsequently the deed was offered in evidence by Mr. Bradley, and being objected to was overruled, after the evidence was stated to be closed, except as to some matter of mere detail, and which the witnesses had been sent for to prove. I made a motion to the court to instruct the jury upon the whole evidence that plaintiff was not entitled to recover; on the argument of this motion I adverted to the plaintiff's letter of 17th Dec. 1835, and to the reference from the record annexed to it, that the Bank of Metropolis had conveyed the lot in question to plaintiff, and to the part of said letter in which it is said "which note I paid at maturity, and accordingly received from the bank a deed," and argued from it that a deed had in fact passed, that the parties had considered it as a fulfilment of the agreement, and both had treated it as such. That it was wholly immaterial, under this view of the case, whether it was formal or not, whether it was in law what the parties had supposed it, or operative or not. That no complaint had been made of it, and no other demand. Mr. Bradley interrupted me in my argument, and said that no deed had been executed by the Bank; and that Mr. Coxe knew it, and so did the President of the Bank. After I had closed my argument he reiterated the same remarks, when I again stated what my argument had been. He then proposed again to offer the deed in evidence, to which objection being made the court overruled the objection, and the evidence as stated in the was given. Then Mr. Bradley as a witness made his statement as above, and Mr. Coxe made this. Whereupon the plaintiff offered to read in evidence the deed before alluded to (copied in page) but the defendant having by his counsel objected to the competency and sufficiency of all the said testimony detailed in this bill of exceptions, and of said deed, the court over-

ruled the same, and permitted the same to go to the jury. To which opinion and decision of said court the defendant by his counsel excepted, and prayed the court to seal this bill of exceptions, which is accordingly done this 3d May, 1838.

W. CRANCH, [SEAL.]
B. THRUSTON, [SEAL.]
JAMES L. MORSELL, [SEAL.]

Defts' 3d Bill of Exceptions

Defendants' 3d Bill of Exceptions.

ERNEST GUTTSCHLICK
vs.
THE BANK OF METROPOLIS.

On the further progress of this trial, and after the evidence stated in the preceding bills of exceptions had been given, the plaintiff further to maintain the issue on his part joined, offered in evidence the proceedings in the Circuit Court of the District of Columbia for the county of Washington, in a certain suit brought by the Patriotic Bank against Samuel Lane, (copied in page) for the purpose of shewing that said Lane had been in fact sued upon the note for $3000, one of the notes mentioned in the deed from B. G. Orr, to Joseph Elgar, dated 21st August, 1818; (copied in page) to the competency and admissibility of the same to prove the said fact, the defendant objected, but the court overruled the objection and permitted the same to go to the jury. To the admission of which testimony the defendant, by his counsel excepted, and prayed the court to seal this bill of exceptions, which is done this third day of May, 1838.

W. CRANCH, [SEAL.]
B. THRUSTON, [SEAL.]

Defts' 4th Bill of Exceptions

Defendants' fourth Bill of Exceptions.

ERNEST GUTTSCHLICK
vs.
THE BANK OF METROPOLIS.

On the further progress of the trial of this case, the plaintiff to sustain the issue on his part joined, gave in evidence to the jury, as mentioned in the preceding bills of exceptions, the article of agreement signed by John P. Van Ness, President of the Bank of Metropolis, and Alexander Kerr, cashier of said bank, dated the 9th day of November, 1827, as before stated, and then having proved that a certain Benjamin G. Orr was duly seized in fee of said premises in said agreement mentioned, under a deed of conveyance from John P. Van Ness, gave in evidence a deed from said Orr to Joseph Elgar, dated the 21st day of August, 1818; (copied in page) and then gave in evidence a deed from said Orr to Alexander Kerr, (copied in page) and a

deed from said Kerr to the Bank of the Metropolis, (copied in page) under which deed the bank entered into possession thereof, and then the said proceedings in the Circuit Court in the case of the Patriotic Bank against Samuel Lane, as set forth in the preceding bill of exceptions, and proved by competent testimony that the said B. G. Orr had died in the year 1823, and the said Samuel Lane in the [year] 1822, both insolvent, and that in the year 1835, said Elgar, at the instance and request of said Patriotic Bank, advertised the property mentioned in said deed to him for sale, in manner following, (copied in page) and that pursuant to said advertisement, he did on the 21st day of December, 1835, enter on the premises and expose to sale, and did sell said lot No. 5 in square No. 489, and the said Patriotic Bank, by its cashier, became the purchaser, and said Elgar executed to said bank a deed for the same, (copied in page) and that the nett proceeds of said sale of said lot, amounting to the sum of $ was carried on the books of the said Patriotic Bank to the credit of said B. G. Orr's note for $3000, mentioned in said deed from said Orr to Elgar, still leaving, as appears by the said books, a balance due on the said note, and then gave in evidence a letter addressed by said plaintiff to said defendant, (copied in page) and then proved by competent testimony, that the said lot was vacant and unenclosed and unimproved, and that after said sale and conveyance to said Patriotic Bank, the cashier of said bank went on to said premises in company with the attorney of said bank, and then and there declared that he took possession of the same; and that in the year 1824 the said lot was assessed on the books of the Corporation of Washington as the property of said Orr; and that from the year 1825 to the year 1828, both inclusive, the same was assessed to said defendant, who paid the taxes thereon; and that from the year 1829 to the year 1835, the same was assessed to said plaintiff, who paid the taxes thereon, and continued in possession till the year 1835, and from that time the same has been assessed to said Patriotic Bank, and further proved that said plaintiff was duly notified by the cashier of said Patriotic Bank, of his intention to take possession of said lot in the manner and at the time of his said entry as aforesaid, and that said lot still remains and has constantly remained open, vacant, unimproved, and unenclosed; and further proved that said plaintiff had paid to said defendant the whole consideration money for which said lot was sold to him, and taken up at maturity a part of said purchase money the note mentioned in the agreement aforesaid signed by said Van Ness and Kerr; and that the said Orr and Kerr, during their lives and the said Elgar, the Bank of Metropolis and Patriotic Bank, were all in the city of Washington from 1818 till after 1835. Whereupon the defendant, by his coun-

sel, moved the court to instruct the jury, that upon the said evidence the plaintiff is not entitled to receive upon the first, or second, or third, or fourth counts in said declaration, which instruction the court refused to give; to which refusal the defendant, by its counsel, excepted, and prayed the court to seal this bill of exceptions, which is accordingly done this 3d day of May, eighteen hundred and thirty-eight.

W. CRANCH, [SEAL.]
B. THRUSTON. [SEAL.]

Whereupon the said plaintiff, by his counsel, filed the following exception:

Plaintiff's first Bill of Exceptions

PLAINTIFF'S FIRST BILL OF EXCEPTIONS.

ERNEST GUTTSCHLICK
vs.
THE BANK OF METROPOLIS.

Upon the trial of this cause the plaintiff, to maintain the issue on his part joined, produced in evidence an agreement, (copied in page) the execution of which was duly proved; and further proved by competent testimony, that he duly paid the said note in the said agreement mentioned.

And thereupon the said defendants, by their counsel, prayed the court to instruct the jury, that upon the evidence aforesaid the said plaintiff was not entitled to recover upon the first count in the declaration, which instruction the court gave.

And the said plaintiff, by his counsel, excepts to the said instruction of the court so given, according to the statute in such case made and provided, and pray the court to sign and seal this exception, which is done this first day of May, 1838.

W. CRANCH, [SEAL.]
JAMES S. MORSELL, [SEAL.]

The paper referred to in defendants' first exception, page

Washington, 9th Nov. 1827.

Receipt

Mr. Ernest Guttschlick,

Bot. of the Bank of the Metropolis.

Lot No. 5 in sq. No. 489—51 feet 1 inch on 6th street, by 93 feet 3½ inches in depth—containing 4765 sq. feet at 25 cts.	$1191 25
By cash received	591 25
Balance due	$600 00

and Bond of

Be it known, that on this ninth day of November, 1827, Ernest Guttschlick hath purchased of the Bank of the Me-

tropolis, lot No. 5, in square No. 489, as above described, and as laid down on the plat of the city of Washington, for the sum of $1191 25; and that he hath paid on account of the same the sum of five hundred and ninety-one dollars and twenty-five cents, leaving due the sum of six hundred dollars, for which he hath given his note to the said bank, payable in six months after date with interest from date, which sum of six hundred dollars, when paid, will be in full for the purchase money of said lot. conveyance to Guttschlick

The Bank of the Metropolis, through the president and cashier, is hereby pledged, when the above sum shall be paid, to convey the said lot, viz. lot 5, in square 489, in fee simple, to the said Ernest Guttschlick, his heirs or assigns, for ever.

In testimony whereof, the said president and cashier, by order of the board of directors, have hereto set their hands and seals this ninth day of November, eighteen hundred and twenty-seven.

JOHN P. VAN NESS, [SEAL.]
President of the Bank of Metropolis.
ALEXANDER KERR, *Cashier.* [SEAL.]

In presence of GEO. THOMAS.

Deed from Joseph Elgar, trustee to the Patriotic Bank of Washington, referred to in defendants' second exception page Deed from Elgar to Patriotic Bank.

JOSEPH ELGAR, Trustee
to
THE PATRIOTIC BANK OF WASHINGTON.

This indenture, made this twenty-second day of December, in the year of our Lord eighteen hundred and thirty-five, between Joseph Elgar, of the city of Washington, and District of Columbia, of the one part, and the "Patriotic Bank of Washington" of the other part:

Whereas, Benjamin Grayson Orr, did on the twenty-first day of August, in the year eighteen hundred and eighteen, make, execute, acknowledge, and deliver to the said Joseph Elgar his certain deed of indenture of that date, which was duly recorded in liber A. T. No. 44, folios 119, 120, and 121, one of the land records for Washington county, in the District of Columbia; whereby the said Benjamin G. Orr conveyed, and meant and intended to convey, in fee simple, to the said Joseph Elgar the lots of land hereinafter particularly described, upon certain trusts in the said deed particularly mentioned, which will more fully appear by reference to the said deed; and whereas the said Joseph Elgar did, in pursuance and execution of the said trust, expose the said lands to sale at public auction, on the day of December instant, at which said sale the said Patriotic Bank of Washing-

ton was the highest bidder, and became the purchaser of the said lands, at and for these several sums per square foot, to wit: lots 5 and 6, in square 533, at and for the sum of eleven cents per square foot, and lot numbered five, in square 489, at and for the sum of thirteen cents per square foot: and whereas the said Patriotic Bank of Washington has fully complied with the terms and conditions of the said sale, now this indenture witnesseth, that for and in consideration of the premises, and for the further consideration of five dollars by the said Patriotic Bank of Washington to him in hand paid, at or before the sealing and delivery hereof, the receipt whereof he doth hereby acknowledge, the said Joseph Elgar hath granted, bargained, sold, assigned, conveyed, and confirmed, and by these presents doth grant, bargain, sell, assign, convey, and confirm to and unto the said Patriotic Bank of Washington, in fee simple, absolute for ever, all those lots, portions or parcels of land lying and being in the said city of Washington, known and distinguished on the plan of said city, by lot numbered five, in square numbered four hundred and eighty-nine; and lots numbered five and six, in square numbered five hundred and thirty-three—together with all the privileges, buildings, improvements, and appurtenances thereto, and to each and every of them belonging.

To have and to hold the said lands and premises to and unto the said Patriotic Bank of Washington, and its assigns, to its absolute use and behoof, in fee simple for ever.

In testimony whereof, the said Joseph Elgar hath hereto set his hand and affixed his seal, the day and year first herein before written.

J. ELGAR, [SEAL.]
Trustee.

Signed, sealed and delivered in presence of
JOHN COX,
SAM. STETTINIUS.

DISTICT OF COLUMBIA,
Washington County, ss.

Joseph Elgar, the party grantor whose name is signed to the foregoing deed, personally appears this twenty-second day of December, 1835, before us the subscribers, two of the Justices of the Peace for the county aforesaid, and acknowledges the same to be his act and deed.

JOHN COX,
SAMUEL STETTINIUS.

On the back of which said deed was the following endorsement, to wit:

"Received, ninth February 1836, to be recorded, and the same day was recorded, in liber W. B. No. 60, folios 45 &

46, one of the land records for Washington County in the District of Columbia, and examined by

WM. BRENT, *Clerk.*

Proceedings in the case of the Patriotic Bank of Washington, against Samuel Lane, referred to in defendants' 3d exception page

THE PATRIOTIC BANK OF WASHINGTON, *vs.* SAMUEL LANE. } *April Term*, 1823.

Be it remembered, that heretofore, to wit. on the twentieth day of December, in the year of our Lord one thousand eight hundred and twenty, the said plaintiff by J. Law, Esq. its attorney, prosecuted and sued forth out of the Circuit Court here the United States writ of capias ad respondendum directed to the Marshal of the District of Columbia, in the words and of the tenor following, to wit:

DISTRICT OF COLUMBIA, to wit:

The United States of America, to the Marshal of the District of Columbia, Greeting:

We command you that you take Samuel Lane, late of Washington county, if he shall be found within the county of Washington, in your said district, and him safely keep, so that you have his body before the Circuit Court of the District of Columbia, to be held for the county aforesaid, at the city of Washington, on the fourth Monday of December, instant, to answer unto the Patriotic Bank of Washington in a plea of trespass on the case, and so forth.

Hereof fail not at your peril, and have you then and there this writ.

Witness, William Cranch, Esquire, Chief Judge of our said Court at the city of Washington, the 31st day of October, Anno Domini, one thousand eight hundred and twenty.

Issued the 20th day of December, 1820.

(J. Law.)

W. BRENT, *Clerk.*

And the aforesaid plaintiff, on the day of prosecuting and suing forth of the aforesaid writ, declared against the said defendant in the plea aforesaid, in form following, to wit:

District of Columbia,

Washington County, to wit:

Samuel Lane, late of Washington county, was attached to answer unto the Patriotic Bank of Washington, in a plea of trespass on the case, and so forth.

And whereupon the said plaintiff, by J. Law, its attorney, complains that whereas heretofore, to wit, on the 20th day of August, in the year of our Lord one thousand eight hundred and eighteen, at the county aforesaid, Benjamin G. Orr, made his certain note in writing, commonly called a promissory note, his own proper handwriting being hereunto subscribed, bearing date the day and year aforesaid, and thereby, sixty days after the date thereof, promised to pay to defendant, by the name of Samuel Lane, or order, the full and just sum of three thousand dollars, current money of the United States, for value received, and then and there delivered the said note to the said defendant, and the said defendant to whom or to whose order the payment of the said sum of money in the said note mentioned, was to be made afterwards and before the payment thereof, and before the time limited in the said note for the payment thereof, to wit, on the day and year aforesaid, at the county aforesaid, endorsed the said note, his own proper hand writing being thereon subscribed, and thereby ordered and appointed the said sum of money in the said note mentioned, to be paid to the said plaintiff, and then and there delivered the said note so endorsed to said plaintiff. And the plaintiff avers, that afterwards, and after the expiration of the said time limited in the said note, for the payment thereof, to wit, on the 22d day of October, in the year eighteen hundred and eighteen aforesaid, it shewed and presented the said note with the endorsement so made thereon as aforesaid, to the said defendant, and then and there required the said defendant to pay the same; but the said defendant did not then, or at any time since, pay the same or any part thereof, to the said plaintiff, but then and there wholly refused so to do; of all which premises the said defendant afterwards, to wit, on the day and year aforesaid, at the county aforesaid, had notice.

By reason whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay the said sum of money in the said note mentioned to the said plaintiff, according to the tenor and effect of the same, and the said endorsement thereon, and being so liable in consideration thereof, then and there undertook and promised to pay the same to the said plaintiff according to the tenor and effect thereof, and the endorsement thereon, when afterwards he should be thereto requested.

And whereas the said defendant afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, was indebted unto the said plaintiff in another sum of three thousand dollars, like money, for the like sum of money by the said plaintiff, to and for the use of the said defendant, before that time paid, laid out and expended, at the special instance and request of the said defendant, and for other money by the said plaintiff before that time lent and advanced to said defendant at his special instance and request, and for other money by the

said defendant before that time had and received, to the use of the said plaintiff; and being so indebted, the said defendant in consideration thereof, afterwards, to wit, at the same day and year aforesaid, at the county aforesaid, undertook and promised the said plaintiff to pay it the said last mentioned sum of money when afterwards he should be thereunto requested.

Yet the said defendant the said several sums of money herein mentioned, or any part thereof, (although often thereto requested, to wit, on the day and year aforesaid, at the county aforesaid, and often afterwards,) hath not paid, but the same, or any part thereof, hath hitherto wholly refused, and still doth refuse, to the damage of the said plaintiff, in the sum of six thousand dollars, current money, and therefore it brings suit, and so forth.

JOHN DOE
&
RICHARD ROE. } Pledges, &c.

J. LAW, *for the Plaintiff.*

At which mentioned fourth Monday of December, in the year of our Lord one thousand eight hundred and twenty, and the day of the return of the aforegoing writ, comes into the Circuit Court here, the said plaintiff, by its attorney aforesaid, and the marshal of the District aforesaid, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here thus endorsed, to wit:

"Cepi TENCH RINGGOLD, *Marshal.*"

And the said defendant being called, appears in court here, by Walter Jones, esquire, his attorney aforesaid, and thereupon, on motion of the said plaintiff by its attorney aforesaid, it is ruled by the court here, that the said defendant answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, or judgment by the court here will be entered against him in default thereof: and the said defendant, by his attorney aforesaid, defends the force and injury, when, and so forth, and prays leave of the court here to imparle until the fourth Monday of October next, and then to answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, and to him it is granted, and the same day is given to the aforesaid plaintiff also. At which mentioned fourth Monday of October, in the year of our Lord one thousand eight hundred and twenty-one, to which said day the said defendant had leave to imparle, and then to answer to the declaration aforesaid of the said plaintiff, come into the Circuit Court here, as well the said plaintiff by its attorney aforesaid, as the said defendant by his attorney aforesaid, and the said defendant by his attorney aforesaid, as before defends the force and injury, when, &c., and saith that he

did not assume upon himself, in manner and form as this aforesaid plaintiff above against him hath complained, and of this he puts himself upon the country; and the said plaintiff in like manner, and so forth; therefore let a jury thereon appear before the court here on the fourth Monday of April next, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c., and the same day is given to the said parties then and there, and so forth.

At which said fourth Monday of April, in the year of our Lord one thousand eight hundred and twenty-two, comes again into the Circuit Court here the said plaintiff, by its attorney aforesaid; and the said defendant doth not come; and the said plaintiff suggests to the court here that, after the last continuance of the plea aforesaid, and before this day, the said defendant departed this life, and the same is not denied; whereupon, on motion of the said plaintiff by its attorney aforesaid, leave is given by the court here to the said plaintiff, according to the act of assembly in such case made and provided, to issue summon, returnable to the next term, directed to the executor or administrator of the said defendant, to appear and defend in the plea aforesaid; whereupon further process of and upon the premises is, by order of the court here, further continued until the fourth Monday of October next; the same day is given to the said plaintiff then and there, &c.

At which said fourth Monday of October, in the year of our Lord one thousand eight hundred and twenty-two, comes again into the Circuit Court here the said plaintiff by its attorney aforesaid, and the marshal of the district aforesaid makes return of the said summons to the court here thus endorsed, to wit:

"Summoned David M. Forrest, administrator de bonis non of Samuel Lane, dec.

"TENCH RINGGOLD, *Marshal.*"

And the said David M. Forrest, in pursuance of such summons, by Walter Jones, Esquire, his attorney, comes also into court here, and defends the force and injury, when, &c. whereupon further process of and upon the premises is by order of court here further continued until the fourth Monday of April next.

And now, to wit, the said fourth Monday of April, in the year of our Lord one thousand eight hundred and twenty-three, comes again into the Circuit Court here, as well the said plaintiff by its attorney aforesaid, as the said defendant by his attorney aforesaid; and the said defendant by his attorney aforesaid, as before, defends the force and injury, when, &c. and saith that he cannot deny the action of the said plaintiff, nor but that the said Samuel Lane, in his lifetime, did undertake and promise in manner and form as the said plaintiff

hath above thereof complained against him, nor but that the said plaintiff hath sustained damages, by reason of the non-performance of the said promises and undertakings in the said declaration mentioned, to the sum of six thousand dollars, current money, as the said plaintiff hath above supposed; and upon this the said plaintiff prays judgment, and his damages so acknowledged, together with his costs and charges by him about his suit in this behalf expended, to be adjudged to it, &c. Therefore it is considered by the court here, that the said plaintiff recover against the said defendant, administrator de bonis non as aforesaid, as well the said sum of six thousand dollars, current money, his said damages so above acknowledged to be sustained by reason of the non performance of the said promises and undertakings, as the sum of thirteen dollars and eighty-one cents for its costs and charges by it, about its suit in this behalf laid out and expended, to be levied of the goods and chattels which were of the said Samuel Lane at the time of his death, in the hands of the said defendant remaining to be administered, if so much thereof in his hands to be administered he hath, and if so much thereof in his hands he hath not, then the costs and charges aforesaid to be levied of the proper goods and chattels of the said defendant, and the said defendant in mercy, &c.

MEMORANDUM.—Judgment rendered in this cause to bind assets. The sum ascertained to be due is $3000, with interest from the 23d day of October, 1818, till paid.

Referred to Auditor to apportion assets.

(Test.) W. BRENT, *Clerk.*

Deed from Benjamin G. Orr to Joseph Elgar, referred to in defendant's third exception, page

Deed from Orr to Elgar

BENJAMIN G. ORR *to* JOSEPH ELGAR. } Deed T. recorded Nov. 17th, 1818.

Whereas Benjamin Grayson Orr, of Washington City, hath drawn his two separate notes of hand negotiable at the Patriotic Bank in said city, one dated the sixth day of August, eighteen hundred and eighteen, for two thousand five hundred dollars, and the other dated the twentieth day of August, eighteen hundred and eighteen, for three thousand dollars, which notes have been regularly endorsed by Samuel Lane of said city. Now this Indenture made this twenty-first day of August, eighteen hundred and eighteen, between the said Benjamin G. Orr of the one part, and Joseph Elgar of the same city of the other part, witnesseth, that the said Benjamin G. Orr for and in consideration of one dollar, current money, to him in hand paid before the sealing and deli-

very of these presents, the receipt whereof is hereby acknowledged, and the said Joseph Elgar, his heirs and assigns, of the same acquitted and discharged, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell to the said Joseph Elgar, his heirs and assigns for ever, all those lots, portions, or parcels of ground, lying and being in the said city of Washington, known and distinguished on the plan of said city by lots numbered five in the square numbered four hundred and eighty-nine, and lots numbered five and six in the square numbered five hundred and thirty-three, together with all the buildings, improvements, and appurtenances thereto belonging. To have and to hold the said lots and premises to the said Joseph Elgar, his heirs and assigns for ever. In trust nevertheless, and for the uses and purposes following: that is to say, in case the said Samuel Lane shall be sued, or put to any cost, trouble, damage, or expense, by reason of his having endorsed the notes above mentioned, or either of them, or by reason of any renewment of the said notes, or either of them, with endorsements of the said Samuel Lane, then, and in that case, it shall be the duty of the said Joseph Elgar to expose to public sale, after having given ten days' notice thereof in one of the newspapers of the said city, all or any part, in his discretion, of the lots and premises above mentioned, and to sell the same for cash, and to make good and sufficient deeds of conveyance to the purchaser or purchasers thereof, and to apply the money arising from said sale, in the first place to reimburse the said Joseph Elgar for any expense he may have incurred in the execution of this trust, and in the next place to discharge the notes above described, or such other note or notes as may have been substituted for the same with the endorsement of the said Samuel Lane, and also to pay and indemnify the said Samuel Lane for all charges, costs, damages, and expenses which he may have sustained or became liable to in consequence of his said endorsement, or any of them.

In testimony whereof, the said Benjamin G. Orr, and the said Joseph Elgar, have to these presents set their hands and affixed their seals, the day and year first above written.

BENJ. G. ORR, [SEAL.]
JOSEPH ELGAR, [SEAL.]

Signed, sealed and delivered in presence of

DANIEL RAPINE,
JOSEPH FORREST.

DISTRICT OF COLUMBIA:

County of Washington, ss.

On this 21st day of August, 1818, personally appeared

before us, two of the justices of the peace for said county, Benjamin G. Orr, and severally acknowledged the above and foregoing instrument of writing to be *their* respective acts and deeds for the purposes therein mentioned.

DAN. RAPINE,
JOSEPH FORREST.

Deed from Benjamin G. Orr to Alexander Kerr, referred to in defendants' fourth exception, page

Deed trust for Orr to A. Kerr.

BENJAMIN G. ORR
to
ALEXANDER KERR, *Cashier.*

} Deed trust, recorded 27th December, 1818.

This indenture, made this eighth day of September, in the year of our Lord one thousand eight hundred and nineteen, between Benjamin G. Orr, of the city of Washington, in the District of Columbia, of the one part, and Alexander Kerr, cashier of the Bank of the Metropolis, at the city of Washington, in the District of Columbia, of the other part.

Whereas, the said Benjamin G. Orr hath obtained a loan from the said bank, of the sum of four thousand two hundred dollars, and hath given his note of hand for the same, bearing even date with these presents, endorsed by Alexander McCormick and William O. Neale, by which said endorsement the said Alexander McCormick and William O. Neale are rendered responsible for, and liable to pay the said sum of money, in case the said Benjamin G. Orr should fail to pay the same; in consideration whereof, the said Benjamin G. Orr is desirous to secure the said endorsers as well as the said bank against all loss or damage which may fall upon either, by the said Benjamin G. Orr failing to pay the amount of said note. Now, therefore, this indenture witnesseth, that the said Benjamin G. Orr, for and in consideration of the premises, and of the sum of one dollar by the said Alexander Kerr to him in hand paid, before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, doth by these presents, grant, bargain, sell, alien and enfeoff unto the said Alexander Kerr and his successor, as cashier of the said bank, lot numbered sixteen, in square numbered four hundred and ninety-one, and lot numbered five, in square numbered four hundred and eighty-nine, with their improvements: To have and to hold the premises unto the said Alexander Kerr and his successors. In trust nevertheless for the following uses and purposes, to wit: In case the said Benjamin G. Orr, and his heirs, executors, administrators or assigns, shall fail to pay or satisfy his aforesaid note of hand or any part thereof, or any note or notes which may be given by the said Benjamin G. Orr, or his heirs, executors or adminis-

trators for the renewal of the same, when the same shall become due, or any proper costs, charges or expenses which may accrue or become due thereon, whether as discount, interest or otherways, in consequence of the failure of the said Benjamin G. Orr, his heirs, executors, or administrators, to pay as aforesaid; and if in case either or any of the aforesaid endorsers shall fully pay and satisfy the same, so as to release and discharge the said Benjamin G. Orr, and his said endorsers from all responsibility and liability to pay the same to the said bank, then and in such case the said Alexander Kerr or his successors shall, upon the request of the endorser or endorsers, who shall have paid or satisfied the same as aforesaid, advertise the premises in one or more of the newspapers of the city of Washington aforesaid, offering the same for sale at public vendue, on a certain day in said advertisement specified at least thirty days posterior to the first insertion of said advertisement in the newspaper aforesaid, and on such terms and conditions of sale as the said Alexander Kerr, or his said successor shall, at the time and place appointed, proceed to sell the premises to the highest bidder, unless the same shall be previously redeemed, and shall convey the same to the purchaser by a good and sufficient deed in fee simple, and shall apply the proceeds of said sale, after paying all proper expenses thereof in the first place to pay and indemnify such endorser or endorsers as may have taken up the said note or notes of the said Benjamin G. Orr, and in the next place to restore and pay over the residue of said proceeds to the said Benjamin G. Orr, or to his executors, administrators, or assigns. But if none of the said endorsers shall satisfy or take up the said note or notes as aforesaid, then and in that case the said Alexander Kerr, or his successor, upon the request of the president and directors for the time being of the said bank, shall advertise and sell the premises in manner as herein before specified, and shall convey the same to the purchaser by good and sufficient deed in fee simple, and shall apply the proceeds of said sale after paying the proper expenses thereof; in the first place, to pay to the said bank the full amount which may be due on said note or notes, whether for the principal sum, or for discount, interest or other proper charges or expenses; and in the next place, to pay over and restore the residue of said proceeds to the said Benjamin G. Orr, or to his executors, administrators or assigns. And the said Benjamin G. Orr, for himself, and his heirs, executors and administrators, doth covenant hereby with the said Alexander Kerr, and his said successor, that he hath good title to the premises, and full right, power and authority to convey the same, as herein intended to be conveyed; that the premises are free and clear from any encumbrance; that he and his heirs will

warrant and for ever defend the same unto the said Alexander Kerr and his said successor, for the purposes herein mentioned, against all persons whomsoever; and also, that the said Benjamin G. Orr, or his heirs shall, at all times hereafter, at the request of the said Alexander Kerr, or his said successor, execute and deliver to him any other or further conveyance of the premises, which he or his counsel learned in the law, may require or advise for the more perfect assurance of the premises unto the said Alexander Kerr, or his said successor, for the purposes herein mentioned. Provided nevertheless, and it is the true intent and meaning of these presents, that, until the sale of the premises, as herein specified, the said Benjamin G. Orr, and his heirs and assigns, shall be permitted to possess, occupy and enjoy as heretofore.

In testimony whereof the said Benj. G. Orr hath hereunto set his hand and seal the day and year first herein mentioned.

BENJ. G. ORR. [SEAL.]

Signed, sealed, and delivered in the presence of GEO. THOMAS.

DISTRICT OF COLUMBIA,

County of Washington, ss.

This fifteenth day of November, in the year of our Lord eighteen hundred and nineteen, personally appears before the subscriber, commissioner of the public buildings, Benjamin G. Orr, the party grantor of the within instrument, and acknowledges the same to be his voluntary act and deed for the purposes therein mentioned.

SAMUEL LANE.

Deed from A Kerr to Bank Metropolis.

Deed from Alexander Kerr, Trustee, to the President and Directors of the Bank of Metropolis, referred to in defendant's 4th exception, page

This Indenture, made this first day of July in the year of our Lord eighteen hundred and twenty-five, between Alexander Kerr of the city of Washington, of the one part, and the President, and Directors of the Bank of the Metropolis, of the said city, of the other part, witnesseth, whereas, by a deed of trust from Benjamin Grayson Orr, formerly of the city of Washington aforesaid, bearing date the eighth day of September, in the year 1819, the above named Alexander Kerr was named trustee, and authorized and empowered to sell and dispose of certain property in the city of Washington at public sale, for the purpose of paying a debt due by the said B. G. Orr to the Bank of the Metropolis; that in pursuance of the said deed of trust, the said

Kerr as trustee, after giving the notice required by the said deed in two of the newspapers printed in the city of Washington, did on the second day of July, 1822, set up and sell the property in the aforesaid deed, described, viz. lot numbered sixteen, in square numbered four hundred and ninety-one, with the buildings and improvements thereon, for the sum of three thousand dollars, and lot numbered five, in square numbered four hundred and eighty-nine, containing 4770 square feet, at thirteen cents per square foot, amounting to six hundred and twenty-one dollars and ten cents, to John P. Van Ness, President of the said bank of the Metropolis, for the use of the said bank, he being the highest bidder; and whereas the purchase money of the said lots and improvements has been placed to the credit of said Orr in the said bank, toward paying the debt of said Orr, and the said Kerr being authorized by the aforesaid deed of trust to execute a conveyance for the same, and to comply with the terms of the said deed, the said Kerr, as trustee, has agreed to execute these presents. Now, this indenture witnesseth, that the said Alexander Kerr, trustee, in consideration of the above recited premises, and also of one dollar current money of the U. S. to him in hand paid by the said John P. Van Ness, President of the Bank of the Metropolis, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, released, aliened, enfeoffed and confirmed, and by these presents, doth grant, bargain, sell, release, alien, enfeoff and confirm unto the said President and Directors of the Bank of the Metropolis and their successors in office, for the only proper use and behoof of the said bank, lot numbered sixteen, in square numbered four hundred and ninety-one, and lot numbered five, in square numbered four hundred and eighty-nine, as laid down on the plat of the city of Washington, together with all the buildings, rights, privileges and appurtenances to the lots of ground belonging. To have and to hold the aforesaid two lots of ground, with the buildings and appurtenances, unto them the said President and Directors of the Bank of the Metropolis, and to their successors in office, to and for the only proper use and behoof of the bank of the Metropolis aforesaid, and to and for no other use, intent or purpose whatsoever, hereby giving to them all the right and title of the said B. G. Orr, agreeably to the aforesaid deed of trust. In witness whereof the said Kerr, as trustee, hath hereunto set his hand and seal, the day and year first before written.

ALEXANDER KERR, [SEAL.]
Trustee.

Signed and sealed in presence of
JAMES ORD,
C. H. W. WHARTON.

DISTRICT OF COLUMBIA,

Washington County.

On this 16th day of July, in the year eighteen hundred and twenty-five, personally appeared before the subscribers, Justices of the Peace in and for the county and district aforesaid, Alexander Kerr, party grantor named in the foregoing instrument of writing, and acknowledges the same to be his act and deed for the purposes therein mentioned.

Acknowledged before

JAMES ORD, *J. P.*
C. H. W. WHARTON, *J. P.*

Advertisement of Joseph Elgar, trustee, to sell the property therein mentioned, and referred to in defendant's fourth exception, (page , not on file.)

Deed from Joseph Elgar, trustee to the Patriotic Bank of Washington, referred to in defendant's fourth exception, (page .) Deed from Elgar to Patriotic Bank.

JOSEPH ELGAR, Trustee, to THE PATRIOTIC BANK OF WASHINGTON. } Deed recorded 9th February, 1836.

This Indenture made this twenty-second day of December, in the year of our Lord eighteen hundred and thirty-five, between Joseph Elgar, of the City of Washington and District of Columbia, of the one part, and the Patriotic Bank of Washington, of the other part.

Whereas, Benjamin Grayson Orr did on the twenty-first day of August, in the year eighteen hundred and eighteen, make, execute, acknowledge, and deliver to the said Joseph Elgar, his certain deed of indenture of that date, which was duly recorded in liber A. T., No. 44, folios 119, 120 and 121, one of the land records for Washington county, in the District of Columbia: whereby the said Benjamin G. Orr conveyed, and meant and intended to convey in fee simple to the said Joseph Elgar, the lots of land hereinafter particularly described, upon certain trusts in the said deed particularly mentioned, which will more fully appear by reference to the said; and whereas, the said Joseph Elgar did, in pursuance and execution of the said trust, expose the said lands to sale at public auction, on the day of December instant, at which said sale the said Patriotic Bank of Washington was the highest bidder, and became the purchaser of the said land, at and for three several sums per square foot, to wit: lots five and six in square 533, at and for the sum of eleven cents per square foot, and lot No. 5 in square 489, at and for the sum of thirteen cents per

square foot: and whereas, the said Patriotic Bank of Washington has fully complied with the terms and conditions of the said sale, now this indenture witnesseth, that for and in consideration of the premises, and for the further consideration of five dollars by the said Patriotic Bank of Washington, to him in hand paid, at or before the sealing and delivery hereof, the receipt whereof he doth hereby acknowledge, the said Joseph Elgar hath granted, bargained, sold, assigned, conveyed, and confirmed, and by these presents doth grant, bargain, sell, assign, convey, and confirm unto the said Patriotic Bank of Washington in fee simple absolute for ever, all those lots, portions, or parcels of land lying and being in the said city of Washington, known and distinguished on the plan of said city, by lot numbered five in square numbered four hundred and eighty-nine, and lots numbered five and six in square numbered five hundred and thirty-three, together with all the privileges, buildings, improvements, and appurtenances thereto, and to each and every of them belonging. To have and to hold the said land and premises to and unto the said Patriotic Bank of Washington and its assigns, to its absolute use and behoof in fee simple for ever.

In testimony whereof, the said Joseph Elgar hath hereto set his hand and affixed his seal, the day and year first herebefore written.

J. ELGAR, [SEAL.]
Trustee.

Signed sealed and delivered in the presence of
JOHN COX,
SAM. STETTINIUS.

DISTRICT OF COLUMBIA,

Washington County, ss.

Joseph Elgar, party grantor, whose name is signed to the foregoing deeds, personally appears this twenty-second day of December, 1835, before us, the subscribers, two of the justices of the peace for the county aforesaid, and acknowledges the same to be his act and deed.

JOHN COX,
SAM. STETTINIUS.

The letter addressed from plaintiff to defendants, and referred to in defendants' fourth exception, not on file.

(TEST.) W. BRENT, *Clerk.*

Appeal to Supreme Court.

And whereas afterwards, to wit, on the fourteenth day of May, in the year of our Lord eighteen hundred and thirty-eight, the said defendants by their attorney aforesaid, produced and filed in court here, the United States writ for the

correcting of errors upon the judgment aforesaid, directed to the judges of the Circuit Court of the District of Columbia, in the county of Washington, and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereto annexed, are hereby transmitted to the said Supreme Court accordingly.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of the said court, this 13th day of August, 1838. Clerk's Certificate.

W. BRENT, *Clerk.*